THE /2.

COMMON-WEALTH OF ENGLAND,

AND THE MANER OF Gouernement thereof.

COMPILED BY THE HONOVRABLE Sir THOMAS SMITH, Knight, Doctor of both Lawes, *and one of the principall Secretaries vnto two moſt worthy* Princes, King EDVVARD, and Queene ELIZABETH.

With new Additions of the chiefe Courts in ENGLAND, *And the Offices therof by the ſaid Author. Alſo a Table* added thereto, of all the principall matters contained in this Treatiſe.

Newly Corrected and Amended.

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TO conceale the graces inſpired by God, or the gifts ingraffed by nature, or the vertues atchieued vnto our ſelues by induſtrie, in all ages, and of all wiſe men, was accounted vndutifulneſſe, vnkindneſſe, and impietie vnto that Common-wealth, in the which, and vnto the which we are both bredde and borne: but to ſuppreſſe the worthie workes of any Author, may iuſtly be iudged not only iniury to the perſon, but euen enuie at the whole world. Wherfore, chauncing vpon this ſhort diſcourſe compiled by the honorable Knight Sir *Thomas Smith*, and conſidering that the ſame could not but be a great light to the ignorant, and no leſſe delight vnto the learned in the lawes and policy of ſundry Regimen ts: I thought it part of my duty, as well for the reuiuing of the fame of ſo notable a man, as for the publique imparting of ſo pithy a Treatiſe, to preſent the ſame vnto thy indifferent and diſcreete iudgment. VVherin, although the errors and raſhneſſe of Scribes, appearing in the contrariety, and corruption of coppies, happening both by the length of time

ſince the firſt making, as alſo by the often tranſ-
ſcripting, might iuſtly haue beene mine excuſe,
or rather diſcourage: yet weighing the authori-
ty of the Author together with the grauity of
the matter, I made no doubt but that the reue-
rence due vnto the one, and the recompence de-
ſerued by the other, would eaſily counteruaile
all faults committed by a Clarke and VVriter.
And whereas ſome termes or other matters may
ſeeme to diſſent from the vſuall phraſe of the
common lawe: of this Realme: notwithſtan-
ding, to him that will conſider that the profeſsi-
on of the maker was principally in the ciuill
lawes, and therefore not to be expected as one
excellent in both, and alſo that the finiſhing of
this worke was in Fraunce, farre from his Li-
brary, and in an embaſſage, euen in the midſt of
waighty affaires, it cannot, nor ought not with-
out great ingratitude be diſpleaſant, or in any
ſort diſliking. VVherefore (gentle Reader) ac-
cept in good part my zeale, and this honorable
mans trauaile, aſſuring thy ſelfe that the ſame
framed by an expert workmaiſter, and forged of
pure and excellent mettall, will not faile in pro-
uing to be a commodious inſtrument.

Vale

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THE MANER OF GOVERNMENT Or Policie of the Realme of ENGLAND.

CHAP. I.
Of the diuersities of Common-wealths or Gouerments.

THey that haue written heere-tofore of Common-wealths, haue brought them into three most simple and spectall kindes or fashions of gouernment. The first, where one alone doth gouerne, is called of the Greeks Μοναρχία, Monarchia. The second, where the smaller number, commonly called of them Ἀριστοκρατία, Aristocratia, and the third, where the multitude doth rule, Δημοκρατία, Democrat. To rule is vnderstood to haue the highest and supreame authoritie of commaundement. That part or member of the common-wealth is saide, to rule, which doth controll, correct, and direct all other members of the Common-wealth. That parte which doth rule, define and commaunde according to the forme of the gouernement, is taken in euerie

rie Common-wealth to bee iuſt and Law: As a rule is alway to bee vnderſtood to bee ſtraight, and to which all woꝛks are to be conforꝛmed, & by it to be iudged: I ſo not meane the Lesbians rule, which is conforꝛmed to the ſtone: but the right rule whereby the Artificer and the Architect do iudge the ſtraightnes of euery mans woꝛke, hee to be reckoned to make his woꝛke perfectest, who goeth nérest to the ſtraightnelle.

Chap. III.

What is iuſt or Lawe in euery Common-wealth or gouernment.

NOw it doth appeare, that it is pꝛofitable to euery Common-wealth (as it is to euerything generally and particularly) to be kept in her moſt perfect eſtate. Then if that part which doth beare the rule, doe commaund that which is pꝛofitable to it, and the commaundement of that part which doth rule on that ſoꝛt, is to be accepted in euery Common-wealth reſpectiuely to be iuſt (as wée haue ſaid beforꝛe) it muſt nédes follow, that the definition which Thraſimachus did make, that to be iuſt, which is the pꝛofite of the ruling and moſt ſtrong part (if it be meant of the Cittie oꝛ Common-wealth, is not ſo farre out of the way, if it be chiillie vnderſtoode) as Plato would make it. But as there is pꝛofit, and likelihood of pꝛofit, ſo there is right and likelihood of right. And as well may the ruling and ſoueraigne part commaund that which is not his pꝛofite, as the iuſt man may offend (notwithſtanding his iuſt and true meaning) when he would amend that which is amiſſe, and helpe the Common-wealth, and to doe good vnto it. Foꝛ in as much as hée attempteth to doe contrary to the Lawe which is already put, hée thereforꝛe by the Law is iuſtly condemned, becauſe his doing is contrary to the

Law

Lawe, and the ordinance of that part which doth commaund.

Chap. III.
Another Diuision of Common-wealths.

But this matter yet taketh another doubt: for of these manner of rulings by one, by the fewer part and by the multitude or greater number, they which haue more methodically, and more distinctly and perfitly written vpon them, doe make a subdiuision: and deuiding each into two; make the one good and iust, and the other euill and vniust: as, where one ruleth, the one they call a King, or Βασιλεὺς, the other τύραννος, a Tyrant: where the fewer number, the one they name a Gouerning of the best men Αριστοκρατίαν or *Remp. Optimatum*, the other of the vsurping of a few Gentlemen, or a few of the richer and stronger sort, ὀλιγαρχίαν, or *Paucorum Potestatem*: & where the multitude doth gouerne, the one they call a Common-wealth by the generall name πολιτείαν, or the rule of the people Δημοκρατία, the other, the rule or the vsurping of the popular, or rascall or viler sorte, because they bee moe in number, Δημοκρατίαν ἁπαντῶν.

Chap. IIII.
Examples of changes in the manner of Gouernment.

In Common-wealths which haue had long continuance, the diuersities of times haue made all these maners of ruling or Gouernement to bee seene: as in *Rome*, Kings Romulus, Numa, Seruius, tyrants, Tarquinius, Sylla, Cæsar: the rule of best men, as in time when the first Consuls were: and the vsurping of a few, as of the Senators after the death of Tarquinius, and before the

succession of the Tribunate, & manifestly in the Decemuirate, but more pernitiously in the Triumuirate of Cæsar, Crassus, and Pompeius: and afterward in the Triumuirate of Octauius, Antonius, and Lepidus: The common-wealth and rule of the people, is in the expulsing of the Decemuiri, and long after, especially after the lawe was made, eyther by Horatius, or (as some would haue it) Hortensius *quod plebs sciuerit, id populum teneat*: And the ruling and vsurping of the popular and rascall, as a little before *Sylla* his raigne, and a little before Caius Cæsars raigne. For the vsurping of the rascality can neuer long indure, but necessarily bredeth, and quickly bringeth forth a tyrant. Of this hath Athens, Siracuse, Lacedemon & other olde ancient ruling Cities had experience, and a man need not doubt but that other common-wealths haue followed the same rate. For the nature of man is, neuer to stand still in one manner of estate, but to grow from the lesse to the more, and decay from the more againe to the lesse, till it come to the Fatal end & destruction, with many turnes, and turmoiles of sicknes, and recouering, seldome standing in a perfect health neither of a mans bodie it selfe, nor of the politicke body which is compact of the same.

Chap. V.

Of the question what is right and iust in a Common-wealth.

So when the common wealth is euill gouerned by an euill ruler and vniust (as in the three last named which bee rather a sicknesse of the politicke bodie, then perfect and good estates) if the lawes bee made, as most like they bee alwaies, to maintaine that estate: the question remaineth, whether the obedience of them be iust, and the disobedience wrong? the profite and conseruation of that

that estate right and iustice, or the dissolution? and whether a good and vpright man, and louer of his countrey ought to maintaine and obey them, or to seeke by all meanes to abolish them? which greate and haughty courages haue often attempted: as Dion to rise vp against Dyonisius, Thrasibulus against the thirty tyrants, Brutus and Cassius against Cæsar, which hath bin cause of many commotions in common wealths, whereof the iudgement of the common people is according to the euent and successe: of them which be learned according to the purpose of the doers, and the estate of the time then present. Certaine it is, that it is alwaies a doubtfull & hazardous matter to meddle with the changing of lawes & gouernement, or to disobey the orders of the rule or gouernement, which a man doth finde already established.

Chap. VI.

That common wealths or gouernments are not most commonly simple, but mixt.

NOwe although the gouernments of Common-wealths bee thus deuided into three, and cutting each into two, so into fiue: yet you must not take that ye shall find any cõmon-wealth or gouernment simple, pure, and absolute in his sort and kind, but as wise men haue deuided for vnderstandings sake, and fantasied foure simple bodies which they call elements: as fire, ayre, water, earth, and in a mans body foure complexions or temperatures, as cholericke, sanguine, flegmatique and melancholicke: not that ye shall finde one vtterly perfect without mixtion of the other, for that nature almost will not suffer: but vnderstanding doth discerne each nature as in his sincerity: so seldome or neuer shall you finde common-wealths or gouernments which

are absolutely & sincerely made of any of them above named, but alwaies mixed with another, and hath the name of that which is more, and ouer-ruleth the other alwaies or for the most part.

Chap. VII.

The definition of a King, and of a Tyrant.

Where one person beareth the rule, they define that to bee the state of a King, who by succession or election, commeth with the good will of the people, to that Gouernement, and dooth administer the Common-wealth, by the Lawes of the same, and by equity, and doth seeke the profit of the people as much as his owne. A Tyrant they name him, who by force commeth to the monarchy against the will of the people, breaketh lawes already made, at his pleasure, maketh other without the aduise and consent of the people, and regardeth not the wealth of his Commons, but the aduancement of himselfe his faction and kindred. These definitions doe containe three differences: the obtaining of the authoritie the manner of administration thereof, and the Butte or marke whereunto it doth tend and shoote. So as one may bee tyrant by his entry and getting of the Gouernment, and a King in the administration thereof. As a man may thinke of Octauius, and peraduenture of Sylla. For they both comming by tyrannie and violence, to that state, did seeme to trauaile very much for the better order of the Common-wealth: howbeit, either of them after a diuers maner. Another may bee a King by entry and a tyrant by administration, as Nero, Domitian, and Commodus: for the Empire came to them by succession. but their administration was vtterly tyrannicall, of Nero after fiue yeeres, of Domitian and Commodus very shortly vpon their new honour. Some both in the comming

ming to their Empire, & in the Butt the which they shoot at, be Kings, but the manner of their ruling is tyrannicall: as many Emperors after Cæsar and Octauius, and many Popes of Rome. The Emperors claime this tyrannicall power by pretence of that Rogation or *Plebiscitum*, which Caius Cæsar or Octauius obtained, by which all the people of Rome did conferre their power and authority vnto Cæsar wholy.

The Pope groundeth his from Christ (*cui omnis potestas data est in cælo & in terra*) whose successor he pretendeth to be: yet the generall Councels make strife with him, to make the Popes power either *Aristocratian*, or at the least *legitimum regnum*, and would faine bridle that *absolutam potestatem*. Some men doe iudge the same of the Kings of Fraunce and certaine Princes of Italy and other places, because they make and abrogate lawes and Edicts, lay on tributes and impositions of their owne will, or by the priuate counsell and aduise of their friends and fauourers onely, without the consent of the people. The people I call that which the word *Populus* doth signifie, the whole body, and the three estates of the Common-wealth: and they blame Lewes the xi. for bringing the administration royall of Fraunce, from the lawfull and regulate raigne, to the absolute and tyrannicall power and gouernment. He himselfe was wont to glorie and say, he had brought the crowne of Fraunce, *hors de page*, as one would say, out of wardship.

Chap. VIII.
Of the absolute King.

Other doe call that kind of administration which the Greeks do call παμβασιλείαν, not tyrannie, but the absolute power of a King, which they would pretend that euery King hath, if hee would vse the same. The o-

ther

ther they call βασιλεῖαν νόμιμον, or the royall power, regulate by lawes: of this I will not dispute at this time. But as such absolute administration in time of warre when all is in armes, and when lawes hold their peace because they cannot be heard, is most necessary: so in time of peace the same is very dangerous, as well to him that doth vse it, and much more to the people vppon whome it is vsed: whereof the cause is the frailtie of mans nature, which (as Plato saith) cannot abide or beare long that absolute and vncontrolled authoritie, without swelling into too much pride and insolencie. And therefore the Romanes did wisely, who would not suffer any man to keepe the Dictatorship aboue sixe monethes, because the Dictators (for that time) had this absolute power, which some Greekes named a lawfull tyrannie for a time. As I remember, Aristotle, (who of all writers hath most absolutely and methodically treated of the deuision and natures of common-wealthes) maketh this sort of government to be one kinde of kinges. But all commeth to one effect: for at the first all Kings ruled absolutely, as they who were either the heades and most auncient of their families, deriued out of their owne bodies, as Adam, Noe, Abraham, Iacob, Esau, reigning absolutely ouer their owne children and bondmen, as reason was: or else in the rude world amongst barbarous and ignorant people, some one then, whome God had endued with singuler wisdome to inuent things necessary for the norishment and defence of the multitude, and to administer iustice, did so farre excell other, that all the rest were but beastes in comparison of him: and for that excelencie, willingly had this authority giuen him of the multitude, and of the Gentiles when he was dead and almost when he was yet liuing, was taken for a God, of others for a Prophet. Such among the Iewes were Moses, Ioshua, and the other Iudges, as Samuel, &c. Romulus and Numa amongst

mongſt the Romanes, Lycurgus and Solon, and diuers others among the Grecks, Zamolxis among the Thracians, Mahomet among the Arabians: And this kinde of rule among the Grecks, is called τύραννις which of it ſelfe at the firſt was not a name odious: But becauſe they who had ſuch rule, at the firſt, did for the moſt part abuſe the ſame, waxed inſolent and proud, vniuſt, and not regarding the Common-wealth, committed ſuch acts as were horrible and odious: As, killing men without cauſe, abuſing their wiues and daughters, taking and ſpoyling all mens goods at their pleaſures, and were not Shepheards as they ought to bee, but rather robbers and deuourers of the people, whereof ſome were contemners of God, as Dioniſius, otherwhile they liued like Diuels, and would yet be adored and accounted for Gods: as Caius Caligula and Domitian: that kinde of adminiſtration, and maner alſo, at the firſt not euill, hath taken the ſignification and definition of the vice of the abuſers, ſo that now both in Greeke, Latine, and Engliſh, a tyrant is counted he, who is an euil King, and who hath no regard to the wealth of his people, but ſeeketh onely to magnifie himſelfe and his, and to ſatiſfie his vicious and cruell appetite, without reſpect of God, of right, or of the Law: becauſe that for the moſt part, they which haue had that abſolute power, haue beene ſuch.

CHAP. IX.

Of the name of King, and the adminiſtration of England.

THat which we call in one ſillable King in Engliſh, the olde Engliſhmen, and the Saxons, from whom our tong is deriued, to this day call in two ſillables, Cyning, which whether it commeth of Cen or Ken, which

 beto-

betokeneth to know and vnderſtand, or Can, which betokeneth to be able, or to haue power, I cannot tell. The participle abſolute of the one wee vſe yet, as when wee ſay, a cunning man *Vir prudens, aut ſciens*: the verbe of the other, as I can doe this, *poſſum hoc facere*. By olde and ancient Hiſtories ẏ I haue read, I do not vnderſtand that our Nation hath vſed any other generall authoritie in this Realme, neither *Ariſtocraticall* nor *Democraticall*, but only the royall and Kingly Maieſtie which at the firſt was deuided into many and ſundry Kings, each abſolutely raigning in his Country, not vnder the ſubiection of other, till by fighting the one with the other, the ouercommed alwaies falling to the augmentation of the vanquiſher and ouercommer: At the laſt the Realme of England grew into one Monarchy: Neither any one of thoſe Kings, neither he who firſt had all, toke any inueſtiture at the hands of the Emperour of Rome, or of any other ſuperiour or forraine Prince, but held of God to himſelfe, and by his ſword, his people and Crowne, acknowledging no Prince on earth his ſuperior, and ſo it is kept and holden at this day. Although King Iohn (by the rebellion of the Nobilitie, aided with the Dolphin of France his power) to appeaſe the Pope, who at that time poſſeſſing the conſciences of his ſubiects, was then alſo his enemie, and his moſt greuous torment (as ſome Hiſtories doe witneſſe) did reſigne the Crowne to his Legate Pandulphus, and toke it againe from him, as from the Pope, by faith and homage, and a certaine tribute yearely. But that act being neither approued by his people, nor eſtabliſhed by act of Parliament, was forthwith, and euer ſithence taken for nothing, either to binde the King, his ſucceſſors, or ſubiects.

Chap.

Chap. X.

What is a Common-wealth, and the parts thereof.

TO bee vnderstoode heereafter, it is necessary yet to make a third deuision of the common-wealth by the parts thereof. A common-wealth is called a society or Common doing of a multitude of free men, collected together, and vnited by common accord and couenants among themselues, for the conuersation of themselues, as well in peace as in warre. For properly an Hoast of men is not called a Common-wealth, but abusiuely, because they are collected but for a time, and for a fact which done each deuideth himselfe from others as they were before. And if one man had, as some of the old Romanes had (if it bee true that is written) fiue thousand, or ten thousand bondmen whom he ruled well, though they dwelled all in one City, or were distributed into diuers villages, yet that were no Common-wealth: for the bondman hath no communion with his master, the wealth of the Lorde is onely sought for, and not the profite of the slaue or bondman. For as they who write of these things haue defined a bondman or slaue as it were (sauing life or humane reason) but the instrument of his Lord, as the axe, the saw, the chessill and gowge is of the Carpenter. Truth it is, the Carpenter looketh diligently to saue, correct, & amend all these: but it is for his owne profite, and in consideration of himselfe, not for the instrument sake. And as these be instruments of the Carpenter, so the Plow, the Cart, the Horse, Ore, or Asse, be instruments of the Husbandman: and though one Husbandman had a great number of all those, and looked well to them, it made no Common-wealth, nor could not be so called. For the priuate wealth of the husbandman is onely regarded, and there is no mutuall society or portion, nor law, nor pleading betweene

the one and the other. And (as he saith) what reason hath the pot to say to the Potter, why madest thou mee thus? or why dost thou breake me after thou hast made me? euen so is the bondman or slaue which is bought for mony, for he is but a reasonable and liuing instrument, the possession of his Lord and master, reckoned among his goods, not otherwise admitted to the society ciuill, or Common-wealth, but is part of the possession and goods of his Lord. Wherefore, except there bee other orders and administrations amongst the Turkes, if the prince of the Turks (as it is written of him) doe repute all other his bondmen and slaues (himselfe and his sonnes onely free men) a man may doubt whether his administration bee to be accounted a Common-wealth, or a Kingdome, or be rather to bee reputed onely as one that hath vnder him an infinite number of slaues or bondmen, among whome there is no right, Lawe, nor Common wealth compact, but onely the will of the Lord and segnior. Surely none of the old Greeks would call this fashion of gouernment, *Rempublicam* or Πολιτειαν for the reasons which I haue declared before.

CHAP. XI.

The first sort, or beginning of an house or Family, called οἰκονομία

Then if this be a society, and consisteth onely of free men, the least part thereof must be two. The naturallest, and first coniunction of two, toward the making of a further society of continuance, is of the husband and of the wife, after a diuers sort, each hauing care of the family, the man to get, to trauaile abroad, to defend; the wife to saue that which is gotten, to tarry at home, to distribute that which commeth of the husbands labour, for the nurriture of the children, and family of them both

and

and to keepe all at home neate and cleane. So nature hath forged each part to his office: the man stern, strong, bold, aduenturous, negligent of his beauty, & spending. The woman weake, fearefull, faire, curious of her beauty and saning. Either of them excelling other in wit and wisedome, to conduct those things which appertaine to their office, and therefore where their wisedome doth excell, therein it is reason that each should gouerne. And without this society of man and woman, the kind of man could not long endure. And to this society men are so naturally borne, that the Prince of all Philosophers, in consideration of natures, was not afraid to say, that a man by nature is rather desirous to fellow himselfe to another and so to liue in couple, then to adhere himselfe with many. Although of all things, or liuing creatures, a man doth shew himselfe most politique, yet can hee not well liue without the society and fellowship ciuill. Hee that can liue alone, saith Aristotle, is either a wild beast in a mans likenes, or else a God rather than a man. So then the house and family is the first & most naturall (but priuate) apparance of one of the best kinds of a common-wealth, that is called Aristocratia, where a fewe, and the best do gouerne, and where not one alwaies: but somtime and in some t: ing another doth beare the rule. Which to maintaine for his part God hath giuen to the man great wit, bigger strength, and more courage, to compell the woman to obey by reason, or force: and to the woman beauty, faire countenance, and sweet words, to make the man obey her againe, for loue. Thus each obayeth and commaundeth other, and they two together rule the house. The house I call heere the man, the woman, their children, their seruants bond and free, their cattle, their houshold stuffe, and all other things, which are reckoned in their possession, so long as all these remaine together in one, yet this cannot be called Aristocratia, but Me

Domus, seu familia.

taphorice, for it is but an house, and little sparke resembling as it were that gouernement.

Chap. XII.

The first and naturall beginning of a Kingdome in Greeke βασιλεία.

But for so much as it is the nature of all things, to encrease or decrease: this house thus encreasing & multiplying by generation, so that it cannot well be comprehended in one habitation, & the children waxing bigger stronger, wiser, and thereupon naturally desirous to rule, the father and mother sendeth them out into couples as it were by prouining or propagation. And the child by marriage beginneth as it were to roote towards the making of a new stocke, and thereupon another house or family. So by this propagation or prouining first of one, and then another, and so from one, to another, in space of time, of many houses was made a streete or village: of many streetes and villages ioyned together, a Citie or Borough. And when many Cities, Boroughs, and Villages, were by common and mutuall consent for their conuersation ruled by that one and first father of them all. it was called a Nation or Kingdome. And this seemeth the first and most naturall beginning and source of Cities, Townes, Nations, Kingdomes, and of all ciuill societies. For so long as the great Grandfather was aliue and able to rule, it was vnnatural for any of his sonnes or of spring to striue with him for the superiority, or to goe about to gouerne, or any wise to dishonor him, from whom he had receiued life and being. And therefore such a one doth beare the first and naturall example of an absolute, and perfect King. For he loued them as his owne children and Nephewes, cared for them as members of his

Prouining, or propagation is when a man layeth a brāch of a Vine or Osier, or any other tree into the ground so that it taketh roote of it selfe, and may liue though it bee cutte clean from the first root or stocke.

Pagus.
Oppidum.
Ciuitas.
Regnum.

his owne body, prouided for them as one hauing by long time more experience then any one, or all of them. They againe honoured him as their father of whose body they came, obayed him for his great wisdome and foresight, went to him in doubtfull cases, as to an Oracle of God, feared his curse and maledictiõ as proceeding from Gods owne mouth. He againe vsed nouriture: For each paine put vpon them, hee esteemed as laide vpon himselfe.

Chap. XIII.

The first and naturall beginning of the rule of a few of the best men, called in Greeke Aristocratia.

But when that great Graundfather was dead, the sonnes of him, and brethren among themselues, not hauing that reuerence to any, nor confidence of wisdome in any one of them, nor that trust the one to the other, betweene whome (as many times it fareth with brethren) some strifes and brawlings had before arisen: To defend themselues yet from them which were Welch and strangers, necessarily agreed among themselues to consult in common, and to beare rule for a time in order, now one, now another: so that no one might beare alwaies the rule, nor any one be neglected. And by this meanes, if any one failed during his yeare or time by ignorance, the next (being either wiser of himselfe, or else by his brothers error and fault) amended it. And in the meane while, at diuers and most times when vrgent necessity did occurre, they consulted all these heades of families together within themselues, how to demeane and order their matters best for the conseruation of themselues, and each of their families generally and particularly. Thus a few, being heades, and the chiefe of their families, equal in birth and Nobility, and not much different in riches,

gouern-

gouerned their own houses, and the descendants of them particularly, and consulted in common vpon publique causes, agréeing also vpon certaine lawes and orders to be kept amongst them. So the best, chiefest, and sagest did rule, and the other part had no cause to striue with them, nor had no cause nor apparance to compare with any of them, neither for age nor discretion, nor for riches or nobility. The rulers sought each to kéepe and maintaine their posteritie, as their sonnes and Nephewes, and such as should succéede them, and carry their names when they were dead, and so render them being mortall by nature, immortall by their fame and succession of posterity: hauing most earnest care to maintaine still this their cousinage and common family, as well against forraigne and barbarous Nations, which were not of their progeny, tongue, or Religion, as against wilde and sauage beastes. This séemeth the naturall course and beginning, or image of that rule of the fewer number, which is called of the Gréekes Ἀριστοκρατία, and of the Latines Optimatum respublica.

Chap. XIIII.

The first originall, or beginning of the rule of the multitude called πολιτεία or Δημοκρατία.

NOw, as time bringeth an end of all things, these brethren being all dead, and their off-spring increasing daily to a great multitude, and the reuerence due to the old fathers in such and so great number of equals sayling, by the reason of the death or doting of the Elders: each owing their merits of education a part to their Fathers and Graundfathers, and so many arising, and such equalities among them, it was not possible that they should be content to be gouerned by a few. For two things being such as for the which men in societie and league

league doe most strive, that is, honour and profit, no men of free courage can be contented to be neglected therein, so that they were faine of necessitie to come to that, that the more part should beare the price away in election of Magistrates and rulers. So that either by course or by lot, each man in turne might be received to beare rule, and haue his part of the honour: and (if any were) of the profite which came by administration of the Common-wealth. For whosoeuer came of that olde great Graundfathers race, he accounted himselfe as good of birth as any other. For service to the Common-wealth, all, or such a number had done it, as they could not be accounted few. And if a few would take vpon them to vsurpe ouer the rest, the rest conspiring together would soone be Maisters of them, and ruinate them wholy. Wherevpon necessarily it came to passe, that the Common-wealth must turne and alter as before from one to a few, so now from a few to many and the most part, each of these yet willing to saue the politicke bodie, to conserue the authority of their nation, to defend themselues against all other, their strife being onely for Empire and rule, and who should doe best for the Common-wealth, whereof they should haue experience made by bearing office and being Magistrates. This I take for the first and naturall beginning of the rule of the multitude, which the Greekes called Δημοκρατία: the Latines, some *Respublica* by the generall name, some *Populi potestas* some *Census potestas*, I cannot tell howe latinely.

Chap. XV.

That the Common-wealth or policy, must be according to the nature of the people.

By this processe and discourse it doth appeare that the mutations and changes of fashions of gouernment in

Common-wealths bee naturall, and doe not alwayes come of ambition or malice: And that according to the nature of the people, so the Common-wealth is to it fit and proper. And as all these three kindes of Common-wealths are naturall, so when to each party or espece and kinde of the people, that is applyed which best agreeth like a garment to the bodie, or shoe to the foote, then the bodie politicke, is in quiet, and findeth ease, pleasure and profite. But if a contrarie forme be giuen to a contrarie maner of people, as when the shoe is too little or too great for the foote, it doth hurt and incomber the conuenient vse thereof, so the free people of nature tyrannized or ruled by one against their willes, were he neuer so good, either faile of courage and ware seruile, or neuer rest vntill they either destroy the King and them that would subdue them, or be destroyed themselues. And againe, another sort there is, which without being ruled by one Prince, but set at libertie, cannot tell what they should doe, but either through insolencie, pride, and idlenes, will fall to robberie and all mischiefe, and to scatter and dissolue themselues, or with foolish ambition and priuate strife consume one another, and bring themselues to nothing. Of both these two we haue Histories inough to beare witnesse, as the Grækes, Romanes, Samnites, Danes, Vandalles, and others. Yet must you not thinke that al Common wealths, administrations and rulings, beganne on this sort by prouining or propagation, as is before written: But many times after a great battaile and long warre, the Captaine wholed a multitude of people gathered peraduenture of diuers Nations and Languages, liking the place which he hath by force conquered, tarieth there, and beginneth a Common-wealth after this maner, and for the most part a Kingdome. As the Gothes and Lombards in Italie, the Frenchman in Gaule, the Sarasins in Spaine, and part of France, the

Græci.
Romani.
Samnites.
Vandali.
Dani.
Norwegi.
Sueci.

Saxons

Saxons in great Britaine, which is now called England: Of which, when that one and chiefe Prince is dead, the nobler sort consult among themselues, and either chuse another head and King, or diuide it into more heads as rulers, so did the Lumbards in Italy, and the Saxons in England: or take at the first a common rule and popular estate, as the Zwitzers did in their cantons and do yet at this day, or else admit the rule of a certaine few, excluding the multitude and communaltie, as the Paduans, Veronenses, and Venetians haue accustomed.

Chap XVI.

The diuision of the parts and persons of the Common-wealth.

TO make all things yet cleere before, as we shall go, there ariseth another diuision of the parts of the Common-wealth. For it is not enough to say that it consisteth of a multitude, of houses and familes, which make streets and villages, and the multitude of the streetes and villages make townes, and the multitude of townes the Realme, and that free men be considered onely in this behalfe, as subiects and Citizens of the Common-wealth, and not bondmen, who can beare no rule nor iurisdiction ouer freemen, as they who bee taken but as instruments and the goods and possessions of others. In which consideration also we do reiect women, as those whom nature hath made to keepe home and to nourish their familie and children, and not to meddle with matters abroad, nor to beare office in a Citie or Common-wealth, no more than Children and infants: Except it be in such cases as the authoritie is annexed to the blood and progenie, as the Crowne, a Duchy or an Erledome: for there the blood is respected, not the age nor the sere.

Whereby an absolute Queene, an absolute Dutches or Countesse, those I call absolute, which haue the name, not by being maried to a King, Duke or Earle, but by being the true, right and next successors in the dignitie, and vpon whom by right of the blood that title is descended: These I say, haue the same authoritie although they be women or children in that Kingdome, Dutchie, or Earledome, as they should haue had if they had been men of full age. For the right and honour of the blood, and the quietnes and suertie of the Realme, is more to be considered, then either the tender age as yet impotent to rule or the serenot accustomed (otherwise) to intermeddle with publicke affaires, being by common intendment vnderstood, that such personages neuer doe lacke the councell of such graue and discréete men as bee able to supply all other defects. This (as I saide) is not enough: But the Diuision of these which be participant of the Common-wealth, is one way of them that beare office, the other of them that beare none: The first are called Magistrates, the second priuate men. Besides, the like was among the Romaines of *Patritij* and *Plebei*, the one striuing with the other a long time, the *Patritij* many yéeres excluding the *Plebei* frō bearing rule, vntill at last al Magistrats were made common betweene thē: yet was there another diuision of the Romans, into *Senatores, equites, & plebs*: the Greeks had also εὐγενεῖς καὶ Δημαρχικοὶ. The French haue at this day, les nobles & la populaire, or gentils homes & villaines: We in England deuide our men commonly into foure sorts, Gentlemen, Cittizens, Yeomen, Artificers, and Labourers: of Gentlemen the first and cheife are the King, the Prince, Dukes, Marquises, Earles, Vicounts, Barrons, and these are called κατ' ἐξοχὴν the Nobilitie, and all these are called Lordes and Noblemen: next to these be Knights, Esquires, and simple Gentlemen.

Chap.

CHAP. XVII.
Of the first part of Gentlemen of England, called *Nobilitas Maior*.

DUkes, Marquises, Earles, Vicounts, and Barrons either be created by the Prince, or come to that honor by being the eldest Sonnes, as highest & next in succession to their parents. For the eldest of Dukes sons during his fathers life is called an earle: an Earles sonne is called by the name of a Vicount or Barron, or els according as the creation is. The Creation I call the first donation and condition of the honor (giuen by the Prince for good seruice done by him, and aduancement that the Prince will bestow vpon him) which with the title of that honour, is commonly (but not alwaies) giuen to him and to his heires, males onely: the rest of the sonnes of the Nobilitie, by the rigour of the lawe be but Esquires, yet in common speech, all Dukes, and Marquises sonnes, and the eldest sonne of an Earle be called Lords. The which name commonly doth agree to none of lower degree then Barons, excepting such onely, as bee thereunto by some speciall office called. The Barrony or degree of Lordes, doth aunswere to the dignitie of the Senators of Rome, and the title of our Nobility to their *patrity*: when *patrity* did betoken *Senatores, aut Senatorum filios*. Census Senatorum was in Rome, at diuers times diuers, & in England no man is created a Barron, except he may dispend of yeerely reuenue one thousand pounds, or one thousand marks at the least. Vicounts, Earles, Marquesses, and Dukes more, according to the proportion of the degree and honour, but though by chaunce hee or his sonne haue lesse, hee keepeth his degree: but if they decay by excesse, and bee not able to maintaine the honour (as *Senatores Romani* were *amoti Senatu*) so sometimes they are not admitted

Nobilitas maior.

Eldest sons of Dukes are not Earles by birth, but Lords, and take their placeaboue Earles, and so are Earles Eldest sonnes in respect of Barons.

Esquires of honour, or lords.

mitted the vpper house in the Parliament, although they keepe the name of Lord still.

Chap. XVIII.

Of the second sort of Gentlemen, which may bee called Nobilitas minor, and first of Knights.

NO man is a Knight by succession, no not the king or Prince. And the name of Prince in England κατ' ἐξοχὴν betokeneth the eldest sonne of Prince of Wales: although the king himselfe bee eldest sonne, and all Dukes be called by generall name Princes. But as in France the kings eldest son hath the title of Doulphin, and hee of the next heyre apparant to the crowne is Monsire, so in England the kings eldest sonne is called κατ' ἐξοχὴν the Prince. Knights therefore be not borne but made, either before the battaile to encourage them the more to aduenture their lines, or after the conflict, as aduancement for their hardinesse and manhood alreadie shewed: or out of the warre for some great seruice done, or some good hope through the vertues which doe appeare in them. And they are made either by the King himselfe, or by his commission and royall authoritie given for the same purpose, or by his Lieutenant in the warres, who hath his royall and absolute power committed to him for that time. And that order seemeth to answere in part to that which the Romaines called *Equites Romanos*, differing in some points, and agreeing in other, as their Common wealth and ours doe differ and agree: for neuer in all points one common-wealth doth agree with another, no nor long time any one common-wealth with it selfe. For all changeth continually to more or lesse and still to diuers and diuers orders, as the diuersity of times doe present occasion, and the mutability of mens wits doth inuent and assay new waies, to reforme and amend that wherein they doe finde

finde fault. *Equites Romani*, were chosen *ex censu*, that is according to their substance and riches. So be Knights in England most commonly, according to the yeerely reuenue of their lands, being able to maintaine that estate: yet all they that had *Equestrem censum, non legebantur Equites*. No more are all made Knights in England that may dispend a knights land or fee, but they onely whome the king will so honour. The number of *Equites* was vncertaine, and so it is of knights, at the pleasure of the Prince. *Equites Romani* had *equum publicum*. The Knights of England haue not so, but finde their owne horse themselues in peace time, and most vsually in warres.

Census Equester was among the Romanes at diuers times of diuers value: but in England whosoeuer may dispende of his free landes fourty poundes starling of yeerely reuenue, by an olde lawe of England, eyther at the coronation of the King, or mariage of his daughter, or at the dubbing of the Prince Knight, or some such great occasion, may bee by the King compelled to take that order and honour, or to pay a fine, which many not so desirous of honour as of riches, had rather disburse. Some, who for causes are not thought worthy of that honour & yet haue abilitie, neither be made knights, though they would, and yet pay the fine of xl.li. sterling at that time when this order began, which maketh now C. li. of currant money of England: as I haue more at large declared in my booke of the diuersity of Standards, or the valour of monies.

When the Romanes did write, *Senatus populusque Romanus*, they seemed to make but two orders that is, of the Senate, and of the people of Rome, and so in the name of people they contained *Equites and Plebem*: so when we in England doe say the Lords and the Commons: the knights, esquires, and other Gentlemen, with

Citi-

Citizens, Burgesses and Yeomen, be accounted to make the Commons. In ordaining of lawes, the Senate of Lords of England is in one house, where the Arch bishops and Bishoppes also bee, and the King or Queene for the the time being as chiefe, the Knights and all the rest of the Gentlemen, Citizens and Burgesses which bee admitted to consult vpon the greatest affaires of the Realm, be in another house by themselues, and that is called the house of the Commons, as we shall more clearly describe when wee speake of the Parliament. Whereupon this word Knight is deriued, and whether it doe betoken no more but that which *Miles* doth in Latine, which is a Souldier, might bee mooued as a question. The word Souldier now seemeth rather to come of sold & paiment and more to betoken a waged or hired man to fight, than otherwise, yet Cæsar in his Commentaries called Soldures in the tongue gallois, men who deuoted and swore themselues in a certaine band or oth one to another, and to the Captaine, which order if the Almaines did follow, it may be that they who were not hired, but beeing of the Nation, vpon their owne charges, and for their aduancement, and by such common oath or band that did followthe warres, were (possibly) κατ ἐξοχὴν called Knights or milites, and now among the Almaines some are called Lance-knights, or souldiers of their band not hyred, although at this day they be for the most part hirelings. Or peraduenture it may be that they which were next about the Prince, as his guard and seruants, picked or chosen men out of the rest, being called in the Almaine language Knighten, which is as much to say as seruants: these men being found of good seruice, the word afterward was taken for an honor, and for him who maketh profession of Armes. Our language is so changed, that I dare make no iudgment thereof Now we call him Knight in English, that the French calleth Chevalier, and

and the Latine *equitem* or *equestris ordinis*.

And when any man is made a Knight, hée kneéling downe, is stroken of the Prince, with his sword naked, vpon the back or shoulder, the Prince saying, sus or sois Chivalier au nom de Dieu, and (in times past) they add S. George, and at his arising the Prince saith auaūcer. This is the manner of dubbing of Knightes at this present: and that terme dubbing, was the old terme in this point, and not creation. At the coronation of a King or Quéen, there be Knights of the Bath made, with long and more curious ceremonies. Knights bannerets are made in the fielde, with the cerimony of cutting of the poynt of his standart and making it as it were a banner: he being before a batcheler Knight, is now of a higher degrée, allowed to display his Armes in a banner as Barons doe. But this order is almost growne out of vse in England. But howsoeuer one be dubbed or made a Knight, his wife is by and by called a Ladie, as well as a Barons wife: hée himselfe is not called Lord, but hath to his name in common appellation added this sillable Sir, as if he before were named Thomas, William, Iohn, or Richard, afterward he is alwaies called Sir Thomas, Sir William, Sir Iohn, Sir Richard, and that is the title which men giue to Knights in England. This may suffice at this time, to declare the order of Knighthood, yet there is another order of Knights in England, which be cal'd the Knights of the Garter. King Edward the third, after he had obtained many notable victories, King Iohn of France, King Iames of Scotland, béeing both prisoners in the tower of London at one time, and King Henrie of Castile the bastard expulsed out of his realme, and Don Petro restored vnto it by the Prince of Wales and Duke of Aquitaine called the black Prince, inuented a societie of honour, and made a choyce out of his owne realme and dominions, and all Christendome: and the

beſt and moſt excellent renowmed perſons in vertues and honour, he did adorne with that title to be Knights of his order, gaue them a garter decked with gold, pearle, and pretious ſtones, with the buckle of gold, to weare daily on the left leg onely, a kirtle, gowne, cloke, chaperon, coller, and other auguſt and magnificall apparell both of ſtuffe and fashion exquiſite and heroicall, to weare at high feaſts, as to ſo high and princely an order was méete: of which order he and his ſucceſſors Kings and Quéens of England to be the ſoueraigne, and the reſt by certaine ſtatutes and lawes among themſelues, be taken as brethen and fellowes in that order, to the number of xxvi. But becauſe this is rather an ornament of the Realme, then any policy or gouernment thereof, I leaue to ſpeake any further of it.

Chap. XIX.

Of Eſquires

Eſcuier or Eſqu're (which we call commonly ſquire) is a French word, and betokeneth *Scutigerum* or *Armigerum*, and be all thoſe which beare Armes (as wée call them) or armories (as they terme them in French) which to beare is a teſtimony of the Nobilitie or race from whence they doe come. Theſe be taken for no diſtinct order of the Common-wealth, but do goe with the reſidue of the Gentlemen: ſaue that (as I take it) they bée thoſe who beare Armes, teſtimonies (as I haue ſaid) of their race, and therefore haue neither creation nor dubbing: or elſe they were at the firſt Coſterels or the bearers of the Armes of Lords or Knights, and by that had their name for a dignitie and honour giuen to diſtinguiſh them from a common ſouldier called in Latine, *Gregarius miles*.

Chap.

Chap. XX.
Of Gentlemen.

Gentlemen be those whom their blood and race doth make noble and knowne. Εὐμενεῖς in Greeke, the Latines cal them al *Nobiles*, as the French Nobles. Εὐμενεῖς or *Nobilitas* in Latine is defined, honor or title giuen, for that the ancestors haue been notable in riches or vertues or (in fewer words) old riches or prowes remaining in one stock. Which if the successors do keepe and follow, they be *vere nobiles*, and Εὐμενεῖς if they doo not, yet the fame and wealth of their ancestors serue to couer them so long as it can, as a thing once gilted though it bee copper within, till the gilt bee worne away. This hath his reason, for the Etimologie of the name serued the efficacy of the worde. *Gens* in Latine betokeneth the race and sirname, so the Romanes had Cornelios, Sergios, Appios Fabios, Æmilios, Pisones, Iulios: Brutos, Valerios, of which who were Agnati, and therefore kept the name were also Gentiles, and remaining the memorie of the glory of their progenitors fame, were Gentlemen of that or that race. This matter made a great strife among the Romans, when those which were nouihomines, were more allowed, for their vertues new and newly shewen, than the old smell of auncient race newly defaced by the euill life of their nephewes and discendents could make the other to be. Thus the Cicerones, Catones, & Marii had much a doe with those auncients, and therefore said Iuuenalis:

Malo pater tibi sit Therſites, dummodo tu ſis
Æacidæ ſimilis Vulcaniaque arma capeſſas:
Quam te Therſitis ſimulem producat Achilles.

But as other Common-wealths were faine to doe, so must all Princes necessarily follow: that is, where ver-

tues, to honor it. And although vertue of auncient race be easier to be obtained, aswell by the example of the progenitors, which encourageth, as also through hability of education and bringing vp, which enableth, and lastly the enraced loue of tennants and neighbors to such Noblemen and gentlemen, of whom they hold, and by whome they doe dwell, which pricketh forward to ensue in their fathers steps. So if all this do faile (as it were great pittie it should) yet such is the nature of all humane thinges, and so the world is subiect to mutability, that it doth many times faile: but when it doth, the Prince and common-wealth haue the same power that their predecessors had, and as the husbandman hath to plant a new tree where the old faileth, so hath the Prince to honour vertue where he doth finde it, to make gentlemen, Esquires, Knights, barrons, Earls, Marquises & Dukes where he seeth vertue able to beare that honor or merits, and deserues it, and so it hath alwaies beene vsed among vs. But ordinarily the King doth only make Knights, & create barrons, or higher degrees: for as for Gentlemen, they be made good cheap in England. For whosoeuer studieth the lawes of the Realm, who studieth in the Vniuersities, who professeth liberal Sciences: & to be short, who can liue idely, & without manuall labour, and will beare the port, charge and countenance of a Gentleman, hee shall bee called master, for that is the title which men giue to Esquires, and other Gentlemen and shall bee taken for a Gentleman. For true it is with vs as he said, *Tanti eris aliis, quanti tibi fueris*: And (if neede be) a King of Heraulds shall also giue him for money armes newly made and inuented, the title whereof shall pretend to haue beene found by the said Herauld in perusing & viewing of olde Registers, where his auncestors in times past had beene recorded to beare the same. Or if he will doe it more truely, and of better faith, hee will write

that

that for the merits of that man, and certaine qualities, which he doth see in him, and for sundry noble acts which he hath performed: he by the authority which hee hath, as King of Heraulds Armes: giueth to him & his heyres these and these Armes: which being done, I thinke hee may be called a Squire, for hee beareth euer after those Armes. Such men are called sometime in scorne, Gentlemen of the first head.

Chap. XXI.

Whether the manner of England in making Gentlemen so easily, is to be allowed.

A Man may make doubt and question, whether this maner of making Gentlemen is to bee allowed or no, and for my part I am of that opinion, that it is not amisse. For first the Prince loseth nothing by it, as hee should doe if it were in France: for the yeoman or husbandman is no more subiect to taile or tare in England than the Gentleman: no, in euery paiment to the King the Gentleman is more charged, which hee beareth the gladlier, and dareth not gaine-say, for to saue and keepe his honour and reputation. In any shew or muster, or other particular charge of the towne where he is, he must open his purse wider, and augment his portion aboue others, or else he doth diminish his reputation. As for their outward shew, a Gentleman (if he will bee so accounted) must goe like a Gentleman, a Yeoman like a Yeoman, and a Rascall like a Rascall: and if hee bee called to the warres, hee must and will (whatsoeuer it cost him) aray himselfe, and arme him according to the vocation which he pretendeth: he must shew also a more manly courage; and tokens of better education, higher stomacke, and bountifuller liberality than others, and keepe about him idle seruants, who shall doe nothing but wait

vpon him. So that no man hath hurt by it but hee himselfe, who heereby perchance will beare a bigger saile than he is able to maintaine. For as touching the policie and gouernement of the Commonwealth, it is not those that haue to doe with it, which will magnify themselues, and goe in higher buskins than their estate will beare: but they which are to bee appointed, are persons tried and well knowne, as shall be declared hereafter.

Chap. XXII.
Of Citizens and Burgesses.

Next Gentlemen be appointed Citizens and Burgesses, such as not onely be frée, and receaued as officers within the Cities, but also be of some substance to beare the charges. But these Citizens and Burgesses, be to serue the Common-wealth, in their Cities and Burrowes, or in corporate townes where they dwell. Generally in the shieres they be of none account, saue only in the common assembly of the Realme to make lawes which is called the Parliament. The ancient Cities appoint foure, and each borrow two, to haue voyces in it, and to giue their consent or dissent, in the name of the Citie or burrow for which they be appointed.

Chap. XXIII
Of yeomen.

Those whome we call yeomen, next vnto the Nobility, Knights and Squires, haue the greatest charge and doings in the Common-wealth, or rather are more traueled to serue in it then all the rest: as shall appeare hereafter. I call him a yeoman whome our lawes doe call *Legalem hominem*, a word familiar in writs and Enquests, which is a frée man borne English, and may dispend

pend of his own free land in yerely reuenue to the summe of xl. s. sterling. This maketh (if the full value were taken now to the proportion of monies) vi. li. of our currant money at this present. This sort of people confesse themselues to be no Gentlemen, but giue the honour to all which be or take vpon them to be Gentlemen, and yet they haue a certaine preheminence and more estimation then labourers and artificers, and commonly liue wealthily, keepe good houses, and doe their businesse and trauaile to acquire riches: these be (for the most part) farmours vnto Gentlemen, which with grazing, frequenting of markets, and keeping seruants not idly as the Gentleman doth, but such as get both their owne liuing and part of their maisters, and by these meanes doe come to such wealth, that they are able and daily doe buy the lands of vnthrifty Gentlemen, and after setting their sonnes to the schole at the vniuersities, to the lawes of the Realme, or otherwise leauing them sufficient lands wherevpon they may liue without labour, doe make their said sonnes by those meanes Gentlemen: These be not called maisters, for that (as I said) pertaineth to Gentlemen only. But to their surnames men adde Goodman: as if the surname be Luter, Finch, White, Browne, they are called goodman Luter, goodman Finch, goodman White, goodman Browne, amongst their neighbours, I meane not in matters of importance, or in law. But in matters of law and for distinction, if one were a Knight, they would write him (for examples sake) Sir Iohn Finch Knight, so if he be an Esquire Iohn Finch Esquire or Gentleman, if he be no Gentleman, Iohn Finch yeoman. For amongst the Gentlemen they which claime no higher degree, and yet be to be exempted out of the number of the lowest sort thereof, bee written Esquires. So amongst the Husbandmen, Labourers, the lowest and rascall sort of the people, such as be exempted out of

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the number of the rascability of the popular, be called and written Yeomen, as in the degree next vnto Gentlemen; These are they which old Cato calleth *Aratores*, and *optimos ciues in Republica*, and such as of whome the writers of Common-wealths praise to haue many in it. Aristotle namely reciteth μόσθακας μεσητίαιμα: these tend their owne businesse, come not to meddle in publike matters and iudgments, but when they are called, and glad when they are deliuered thereof, are obedient to the Gentlemen and rulers, and in warre can abide trauaile and labour, as men vsed to fight for their Lords of whom they hold their lands, for their wifes and children, for their Country and Nation, for praise and honour against they come home, and to haue the loue of their Lord and his children, to be continued towardes them and their children, which haue aduentured their liues for and with him and his. These are they which in the old world gate that honour to England, not that either for wit, conduction, or for power they are or were to be compared to the Gentlemen, but because they be so many in number, so obedient at the Lords call, so strong of body, so hard to endure paine, so couragious to aduenture with their Lord or Captaine, going with, or before them, for else they be not hasty nor neuer were, as making no profession of knowledge of warre. These were the good archers in times past, and the stable troupe of footemen that affraid all Fraunce, that would rather die all, then once abandon the Knight or Gentleman their Captaine, who at those daies commonly was their Lord, and whose tennants they were, ready (besides perpetuall shame) to be in danger of vndoing of themselues, and all theirs, if they should shew any signe of cowardise, or abandon the Lord, Knight or Gentleman of whome they held their liuing. And this they haue amongst them from their forefathers, told one to another. The Gentlemen of Fraunce, and the

the Yeomen of England, are renoumed, becauſe in battaile of horſemen, Fraunce was many times too good for vs, as we againe alway for them on foote. And Gentlemen for the moſt part be men at armes and horſmen, and Yeomen commonly on foote: howſoeuer it was, yet the Gentlemen had alwaies the conduction of the Yeomen, and as their Captaines were either a foote or vpon a little nagge with them, and the Kings of England in foughten battailes remaining alwaies among the footemen, as the French Kings among their horſemen. Each Prince thereby, as a man may geſſe, did ſhew where he thought his ſtrength did conſiſt. What a Yeoman is I haue declared, but from whence the word is deriued it is hard to ſay: it cannot be thought that Yeomen ſhould be ſaid of a young man, for commonly we doe not call any a yeoman till he be married, and haue children, and as it were, haue ſome authority among his neighbours. Yonker in low Dutch betokeneth a meane Gentleman, or a gay fellow. Poſſible our Yeomen not being ſo bold as to name themſelues Gentlemen, when they came home, were content when they had learde by frequentation with low Dutchmen, of ſome ſmall Gentleman (but yet that would be counted ſo) to be called amongſt them, yonker man, they calling ſo in warres by mockage or in ſport the one another, when they came home, yonker man, and ſo Yeoman: which word now ſignifieth among vs, a man well at eaſe, and hauing honeſtly to liue, and yet not a Gentleman: whatſoeuer that word yonker man, yong man, or Yeoman doth more or leſſe ſignifie to the Dutchmen.

German in the Saxon is a married man and hereof commeth our Yeoman, for after marriage men are accounted ſetled members in the Common wealth, but not before. A yonker commeth of yong heire which is a ſonne and heire to a gentleman or a yong gentleman.

CHAP. XXIII.

Of the fourth ſort of men which doe not rule.

THe fourth ſort or claſſe amongſt vs, is of thoſe which the old Romans called *capite ſenſi* *proletarij* or

operarij, daylaborers, more husbandmen, yea Marchants or retailers which haue no free land, copyholders, and all artificers, as Tailers, Shoomakers, Carpenters, Brickmakers, Bricklayers, Masons, &c. These haue no voyce nor authority in our Common-wealth, and no account is made of them, but only to be ruled, and not to rule other, and yet they be not altogether neglected. For in Cities and corporate townes for default of Yeomen, enquests and Iuries are impaneled of such manner of people. And in Villages they be commonly made Churchwardens, Alecunners, and many times Constables, which office toucheth more the Comm n-wealth, and at the first was not imployed vpon such low and base persons. Wherefore generally to speake of the Common-wealth or policy of England, it is gouerned, administred, and mannaged by three sorts of persons, the Prince, Monarch, and head Gouernour, which is called the King, or if the crowne fall to a woman, the Queene absolute, as I haue heretofore said: In whose name and by whose authoritie all things are administred. The Gentlemen, which be deuided into two parts, the Barony or estate of Lords containing Barons and all that be aboue the degree of a Baron, (as I haue declared before:) and those which be no Lords, as Knights, Esquires, and simply Gentlemen.

The third and last sort of persons, is named the Yeomanry: Each of these hath his part and administration in iudgments, corrections of defaults, in election of officers, in appointing and collection of tributes and subsidies or in making lawes, as shall appeare hereafter.

THE

THE SECOND BOOKE.

CHAP. I.

The deuision and definition of the Lawes of this Realme in generall.

THe lawes of England consist in two points, { Judgement and Practise.

In Judgment are consitered the { Persons. Place. Matter, and Manner.

The Persons in iudgement are the { Iudges in the Courtes. Seargeants and counsellers.

In practise are considered the { Persons, and their Office.

The persons are { Protonotaries. Sollicitors, and Atturneis.

Their office [illegible] prepare the matter, and to make it readie for the Iudges to determine.

The Protonotaries are the Clerkes in the Court, which doe record the matters hanging in iudgement, and

doe frame the pleading, enter the rules and orders of the Court the verdites and iudgements giuen in the same.

Solicitors are such, as beeing learned in the Lawes, and informed of their maisters cause, doe informe and instruct the Counsellors in the same.

Attorneis are such as by experience, haue learned and do know the orders and manner of proceeding in euerie court where they serue, and doe purchase out writs and processe belonging to their Clients cause. They see to his suites, that he be not hindred by negligence. They pay the fees belonging to the Courts, and prepare the cause for iudgement.

The places for iudgement are the courts where sentence is giuen, and the lawes made: as, the Parlement, Chauncerie, Kings-bench, the Common-pleas, the Exchequer, the Court of Wards, the Star-chamber, the Court of Requests, and the Duchie Court of Lancaster.

The matter of the Law is { Iustice, and Equitie.

The manner of their seuerall proceedings, followeth.

Chap. II.

Of the Parlement, and the authority thereof.

The most high and absolute power of the Realme of England consisteth in the parlement. For as in war where the King himselfe in person, the Nobility, the rest of the gentilitie, & the yeomanrie are, is the force & power of England: So in peace & consultation where the prince is to giue life, and the last and high commandement: the Barronie or the Nobilitie for the higher: the Knights Esquires, gentlemen and commons for the lower part of the Commonwealth, the bishops for the clergie bee present

ſent to aduertiſe, conſult and ſhew what is good and neceſſarie for the Common-wealth; and to conſult together and vpon mature deliberation euery bill or law beeing thrice read and diſputed vpon in either houſe, the other two parts, firſt each a part, and after the Prince himſelfe in Preſence of both the parties, doth conſent vnto and alloweth. That is the princes and whole Realms deede: wherupon iuſtly no man can complaine, but muſt accommodate himſelfe to finde it good and obey it

That which is done by this conſent is called firme, ſtable and *ſanctum*, and is taken for lawe. The Parlement abrogateth old lawes, maketh newe, giueth order for things paſt, and for things heerafter to be followed, changeth rights and poſſeſſions of priuate men, legitimateth baſtards, eſtabliſheth formes of religion, altereth waights and meaſures, giueth forme of ſucceſſion to the Crowne, defineth of doubtfull rights, whereof is no law already made, appointeth ſubſidies, tailes, tares, and impoſitions, giueth moſt free pardons and abſolutions, reſtoreth in blood and name, as the higheſt court condemneth or abſolueth them whome the Prince will put to that tryall. And to bee ſhort, all that euer the people of Rome might do, either in *Centuriatis comitijs*, or *tributis*, the ſame may bee done by the Parlement of England, which repreſenteth, and hath the power of the whole Realme, both the head and the bodie. For euery Engliſhman is intended to be there preſent, either in perſon, or by procuration and atturny, of what preheminence, ſtate, dignitie or qualitie ſoeuer he be, from the Prince, (be he King or Queene) to the loweſt perſon of England. And the conſent of the Parlement, is taken to be euery mans conſent. Alias tributis

The Iudges in Parliament are the King or Queens Maieſty, the Lordes temporall and ſpirituall, the Commons repreſented by the knights and Burgeſſes of eaeſhiere

Shire and Borough Towne. These all, or the greater part of them and that with the consent of the Prince for the time being, must agree to the making of Lawes.

The officers in Parlement are the Speakers, two Clarkes, the one for the higher house, the other for the lower, and Committies.

The speaker is hee that doth commend and preferre the bils exhibited into the Parliament, and is the mouth of the parliament. Hee is commonly appointed by the King or Queene, though accepted by the assent of the house.

The Clarkes are the keepers of the parlement rolles and records, and of the statutes made, and haue the custody of the priuate statutes not printed.

The Committies are such as eyther the Lords in the higher house, or burgesses in the lower house, doe choose to frame the Lawes vpon such bils as are agreede vpon, and afterwarde to be ratified by the same houses.

Chap III.

The forme of holding the Parliament.

The Prince sendeth forth his rescripts or writs to euery Duke, Marquesse, Baron, and euery other Lord temporall or spirituall who hath voyce in the Parliament, to be at his great counsell of Parliament such a day (the space from the date of the writte is commonly at the least 40. dates) he sendeth also writs to the Sheriffes of euery shire, to admonish the whole shire to chose two Knights of the Parliament in the name of the shire, to heare and reason, and to giue their aduise and consent in the name of the shire, and to be present at that day: likewise to euery Citty and towne, which of auncient tyme hath bene wont to find Burgesses of the Parliament, so to make election, that they might be present there at the first

first day of the Parliament. The Knights of the shire be chosen by all the Gentlemen and Yeomen of the shire, present at the day assigned for the election: the voyce of any absent can be counted for none. Yeomen I call here (as before) that may dispend at the least xl.s. of yerely rent of free land of his owne. These meeting at one day, the two who haue the more of their voices, be chosen Knights of the shire for that Parliament: likewise by the plurality of the voices of the Citizens and Burgesses, be the Burgesses elected. The first day of the Parliament, the Prince and all the Lords in their robes of Parliament doe meete in the higher house, where after prayers made, they that be present are written, and they that be absent vpon sickneesse, or some other reasonable cause (which the Prince will allow) doe constitute vnder their hand and seale, some one of those who be present, as their procurer or Atturny, to giue voyce for them, so that by presence or Atturny and proxy they be all there, all the Princes and Barons, and all Archbishops and Bishops, and (when Abbots were) so many Abbots as had voyce in Parliament. The place where the assembly is, is richly tapessed and hanged, a Princely and royall throne as appertaineth to a King, set in the middest of the higher place thereof. Next vnder the Prince sitteth the Chancellor, who is the voyce and Orator of the Prince. On the one side of that house or chamber, sitteth the Archbishops and Bishops, each in his ranke, on the other side the Dukes and Barons.

In the middest thereof vpon woolsackes sitteth the Iudges of the Realme, the Maister of the Roules, and the Secretaries of estate. But these that sit on the woolsacks haue no voice in the house, but onely sit there to answere their knowledge in the law, when they be asked, if anie doubt arise among the Lords: The Secretaries doe answere of such letters or things passed in counsell, whereof

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they haue the cuſtodie and knowledge: and this is called the vpper houſe, whoſe conſent and diſſent is giuen by each man ſeuerally, and by himſelfe, firſt for himſelfe, and then ſeuerally for ſo many as he hath letters and proxies, when it commeth to the queſtion, ſaying onely content or not content, without further reaſoning or replying. In this meane time the Knights of the ſhieres, and Burgeſſes of the Parliament (for ſo they are called that haue voice in Parliament, and are choſen as I haue ſaid before to the number betwixt three and foure hundred) are called by ſuch as it pleaſeth the Prince to appoint, into an other great houſe or chamber by name, to which they anſwere: and declaring for what ſhiere or towne they anſwere, then they are willed to chooſe an able and diſcreete man, to bee as it were the mouth of them all, and to ſpeak for, and in the name of them, and to preſent him ſo choſen by them to the Prince: which done they comming all with him to a Bar, which is at the nether ende of the vpper houſe, there he firſt prayſeth the Prince, then maketh his excuſe of inability, and prayeth the prince that hee would command the commons to chooſe another. The Chauncellour in the Princes name doth ſo much declare him able, as he did declare himſelfe vnable, and thanketh the Commons for chooſing ſo wiſe, diſcreete, and eloquent a man, and willeth them to goe and conſult of lawes for the Common-wealth. Then the ſpeaker maketh certaine requeſts to the Prince in the name of the Commons, firſt, that his Maieſty would be content that they may vſe and enioy all their liberties and priuileges that the Common houſe was wont to enioy.

Secondly, that they may frankly and freely ſay their mindes, in diſputing of ſuch matters as may come in queſtion, and that without offence to his Maieſtie.

Thirdly, if any ſhould chance of that lower houſe to offend, or not to doe or ſay as ſhould become him, or if a-

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ny should offend any of them being called to that his highnesse Court, that they themselues might (according to the auntient custome) haue the punishment of them. And fourthly, that if there came any doubt, whereupon they shall desire to haue the aduise or conference with his Maiestie, or with any of the Lords, that they might doe it: all which he promiseth in the Commons names, that they shall not abuse, but haue such regard as most faithfull, true, and loving subiects ought to haue to their Prince.

The Chancellor answereth in the Princes name, as appertaineth. And this is all that is done for one day, and sometime for two. Besides the Chancellour, there is one in the vpper house, who is called Clark of the Parliament, who readeth the bills. For all that commeth in consultation either in the vpperhouse or in the neather house, is put in writing first in paper, which being once read he that will, riseth vp & speaketh with it or against it: and so one after another so long as they shall thinke good. That done, they goe to another, and so another bill. After it hath bene once or twise read, and doth appeare that it is somewhat liked as reasonable, with such amendment in words, and peraduenture some sentences, as by disputation seemeth to be amended: in the vpper house the Chancellor asketh if they will haue it ingrossed, that is to say, put into parchment: which done, and read the third time, and that eft-soones, if any be disposed to obiect, disputed againe among them, the Chancellor asketh if they will goe to the question: and if they agree to goe to the question, then he saith, here is such a lawe or act concerning such a matter, which hath beene thrise read heere in this house, are ye content that it be enacted or no? If the not contents be moe, then the bill is dashed, that is to say, the law is annihilated, and goeth no farther. If the contents be the moe, then the Clarke writeth vnderneath: Soit

baille aux commons, And ſo when they ſee time, they ſend ſuch bills as they haue approued, by two or three of thoſe which doe ſit on the woollſaks to the Commons: who aſking licence and comming into the houſe, with due reuerence, ſaith to the ſpeaker: Maiſter ſpeaker, my Lords of the vpper houſe haue paſſed among them and think good, that there ſhould be enacted by parliament ſuch an act, and ſuch an act, and ſo readeth the titles of that act or acts. They pray you to conſider of them, and ſhew them your aduiſe, which done they goe their way. They being gone, and the doore againe ſhut, the ſpeaker reherſeth to the houſe what they ſaid. And if they be not buſie diſputing at that time in another bill, he aſketh them ſtraight-way if they will haue that bill, or (if there bee moe) one of them.

In like manner in the lower houſe the ſpeaker ſitting in a ſeat or chaire for that purpoſe ſomewhat higher, that he may ſee and be ſeene of them all, hath before him, in a lower ſeate his Clarke, who readeth ſuch bills as be firſt propounded in the lower houſe, or be ſent downe from the Lords. For in that point each houſe hath equall authority, to propound what they think meete, either for the abrogating of ſome law made before, or for making of a new. All Bills be hiſe in three diuers daies read and diſputed vpon, before they come to the queſtion. In the diſputing is a maruelous good order vſed in the lower houſe. He that ſtandeth vppe bare-headed is vnderſtanded that he will ſpeake to the bill. If moe ſtand vp, who that is firſt iudged to ariſe, is firſt heard, though the one doe praiſe the law, the other diſſwade it, yet there is no altercation. For euery man ſpeaketh as to the ſpeaker, not as one to another, for that is againſt the order of the houſe. It is alſo taken againſt the order, to name him whome ye doe confute, but by circumlocution, as he that ſpeaketh with the bill, or he that ſpake againſt the bill,

and

and gaue this and this reason. And so with perpetuall Oration not with altercation, he goeth through till hee haue made an end. He that once hath spoken in a bill, though he be confuted straight, that day may not reply, no though he would chang his opinion. So that to one bill in one day one may not in that house speake twise, for else one or two with altercation would spend all the time. The nert day he may, but then also but once.

No reuiling or nipping words must be vsed. For then all the house will cry, it is against the order: and if any speake vnreuerently or seditiously against the Prince or the priuie Counsell, I haue seene them not only interrupted, but it hath beene moued after to the house, and they haue sent them to the Tower. So that in such a multitude, and in such diuersity of mindes, and opinions, there is the greatest modesty and temperance of speech that can be vsed. Neuertheless, with much doulce and gentle termes, they make their reasons as violent and as vehement the one against the other as they may ordinarily, except it be for vrgent causes, and hasting of time. At the afternoone they keepe no Parliament. The speaker hath no voyce in the house. nor they will not suffer him to speake in any bill to moue or dissuade it. But when any Bill is read, the speakers office is, as briefly and as plainely as he may, to declare the effect thereof to the house. If the Commons doe assent to such bills as be sent to them first agreed vpon from the Lords thus subscribed, Les commons ont assentus, so if the Lords doe agree to such bills as be first agreede vpon by the Commons, they send them downe to the speaker thus subscribed, Les Seigneurs ont assentus, If they cannot agree, the two houses (for euery bill from whence so euer it doth come, is thrise read in each of the houses) if it be vnderstoode that there is any sticking, sometimes the Lords to the Commons, sometime the Commons to the Lordes

doe require that a certaine of each house may meete together, and so each part to be enformed of others meaning, and this is alwaies graunted. After which meeting for the most part, not alwaies, either part agrees to others bills.

In the vpper house they giue their assent and dissent each man seuerally and by himselfe, first, for himselfe, & then for so many as he hath proxie. When the Chancellour hath demanded of them, whether they will goe to the question after the bill hath been thrice read, they saying only content or not content, without further reasoning or replying: and as the more number doth agree, so it is agreed on, or dashed.

In the nether house none of them that is elected, either Knight or Burges can giue his voice to another, nor his consent or dissent by proxie. The more part of them that be present onely maketh the consent or dissent. After the bill hath béene twise reade, and then engrossed, and eft-soones read and disputed on enough as is thought, the speaker asketh if they will goe to the question: And if they agree, he holdeth the bill vp in his hand and saith: As many as will haue this bill goe forward, which is concerning such a matter, say yea, Then they which allow the bill crie yea, and as many as will not, say no: as the crie of yea or no is bigger, so the bill is allowed or dashed. If it bee a doubt which cry is bigger, they deuide the house, the speaker saying, as many as doe allow the bill goe downe with the bill, and as many as doe not, sit still. So they deuide themselues, and being so deuided they are numbred who made the more part, and so the bill doth speed. It chaunceth sometime that some part of the bil is allowed, some other part hath much controuersie and doubt made of it: & it is thought if it were amended it would goe forward. Then they choose certaine Committees of them who haue spoken with the bill and

as

againſt it, to amend it, and bring it againe ſo amended, as they amongſt them ſhall thinke meete: and this is before it is engroſſed, yea and ſometime after. But the agreement of theſe Committes is no preiudice to the houſe. For at the laſt queſtion they will either accept it or daſh it, as it ſhall ſeeme good, notwithſtanding that whatſoeuer the Committes haue done.

Thus no bill is an act of Parlament, ordinance, or edict of law, vntill both the houſes ſeuerally haue agreed vnto it after the order aforeſaid, no nor then neither. But the laſt day of that parlament or ſeſſion the Prince commeth in perſon in his parlament robes and ſitteth in his ſtate: all the vpper houſe ſitteth about the Prince in their ſtates and order in their robes. The ſpeaker with all the common houſe commeth to the Barre, and there after thankſgiuing firſt in the Lords name by the Chancelour, &c. And in the commons name by the ſpeaker to the Prince, for that he hath ſo great care of the good gouernement of his people, and for calling them together to aduiſe of ſuch things as ſhould be for the reformation, eſtabliſhing, and ornament of the commonwealth: the Chancelour in the princes name giueth thanks to the Lords and commons for their paines and trauailes taken, which he ſaith the Prince will remember and recompence when time and occaſion ſhall ſerue, and that he for his part is ready to declare his pleaſure concerning their proceedings, whereby the ſame may haue perfect life & accompliſhment by his princely authority, & ſo haue the whole conſent of the Realme. Then one reades the titles of euery act which hath paſſed at that Seſſion, but onely in this faſhion: An act concerning ſuch a thing, &c. It is marked there what the Prince doth allow, and to ſuch hee ſaith: Le roy, or la Royne le veult. And thoſe be taken now as perfect lawes and ordinances of the Realme of England and none other, and as ſhortly

as may be put in print, except it be some private cause or law made for the benefit or preiudice of some priuate man, which the Romaines were wont to call *priuilegia*. These be onely exemplified vnder the seale of the parliament, and for the most part not printed. To those which the Prince liketh not, hee answereth, Le Roy, or le Royne sadauisera, and those bee accounted vtterly dashed and of none effect.

This is the order and forme of the highest and most authenticall Court of England, by vertue whereof all those things be established whereof I spake before, and no other meanes accounted available to make any new forfaiture of life, member, or landes of any English man, where there was no lawe ordained for it before. Now let vs speake of the sayde parts when they be seuerall.

CHAP. IIII.

Of the Monarch, King, or Queene of England.

THe Prince whome I now call (as I haue often before) the Monarch of England, King, or Queen, hath absolutely in his power the authority of warre and peace, to defie what Prince it shall please him, and to bid him warre, and againe to reconcile himselfe and enter into league or truce with him at his pleasure, or the aduise onely of his priuie Counsell. His priuie Counsell are chosen all at the Princes pleasure out of the Nobility or Warony, and of the Knights, and Esquires such and so many as he shall thinke good, who doe consult daply, or when neede is of the weighty matters of the Realme to giue their iudgement to their Prince their best aduise they can. The Prince doth participate to them all, or so many of them as hee shall thinke good such legations and messages as come from forreigne Princes, such letters or occurrents as be sent to himselfe or to his Secretaries, and

hee

keepeth so many ambassages and letters sent vnto him secret as hee will, although these haue a particular oath of a Counsellour touching faith and secrets administred vnto them when they be first admitted into that company. So that herein the Kingdome of England is farre more absolute then either the Dukedome of Venice is, or the kingdome of the Lacedemonians was. In warre time, and in the field the Prince hath also absolute power, so that his word is a law, hee may put to death, or to other bodily punishment, whome hee shall thinke so to deserue, without processe of lawe or forme of iudgement. This hath beene sometime vsed within the Realme before any open warre, in suddaine insurrections and rebellions, but that not allowed of wise and graue men, who in that their iudgement had consideration of the consequence and example, as much as of the present necessity, especially when by anie meanes the punishment might haue beene done by order of lawe. This absolute power is called martiall law, and euer was, and necessarily must be vsed in al camps and Hosts of men, where the time nor place doe suffer the tarriance of pleading and processe be it neuer so short, and the important necessitie requireth speedie execution, that with more awe the Souldier might be kept in more straight obedience, without which neuer Captaine can doe any thing valeable in the warres.

The Prince vseth also absolute power in crying and decreeing the money of the Realme by his proclamation onely. The money is alwaies stamped with the Princes image and title. The form, fashion, manner, weight, fineneſſe and baſeneſſe thereof, is at the discretion of the Prince. For whom should the people trust more in that matter than their Prince, seeing the coyne is onlie to certifie the goodneſſe of the mettall and the waight, which is affirmed by the princes image and marke? But if the

prince

Prince will deceiue them, and giue them copper for siluer or golde, or enhance his coyne more than it is worth, he is deceiued by his subiects. For in the same sort they pay the Prince his rents and customes. And in time they will make him pay ratibly or more for meat, drinke, and victuals for him and his, and for their labour, which experience doth teach vs now in our daies to bee done in all regions. For there euer hath beene and euer will bee a certaine proportion betweene the scarcitie and plenty of other things, with gold and siluer. For all other measures and waights, aswell of dry things as of wet, they haue accustomed to be established or altered by the Parliament, and not the princes proclamation onely.

The Prince vseth also to dispence with lawes made, whereas equitie requireth a moderation to be had, and with paines for transgressing of lawes, where the paine of the Lawe is applyed onely to the Prince. But where the forfaite (as in popular actions it chaunceth many times) is part to the Prince, the other part to the declarator, detector or informer, there the Prince doth dispence for his owne part onely. Where the criminall action is intended by inquisition (that manner is called with vs at the Princes suite) the Prince giueth absolution or pardon, yet with a clause, *modo stet rectus in curia*, that is to say, that no man obiect against the offendor. Whereby notwithstanding that he hath the Princes pardon if the person offended will take vpon him the accusation (which in our language is called the appeale) in cases where it lieth, the princes pardon doth not serue the offender.

The prince giueth all the chiefe and highest offices or magistracies of the Realme, best of iudgement or dignitie, temporall or spirituall, and hath the tenthes and first fruites of all Ecclesiasticall promotions, except in the Vniuersities, and certaine Colledges, which bee exempt.

All

All writtes, executions and commaundements, bee done in the Princes name. We doe say in England, the life and member of the kings subiects are the kings only, that is to say, no man hath haulte nor moyenne iustice but the king, nor can hold plea thereof. And therefore all those pleas which touch the life or the mutilation of man be called pleas of the crowne, nor can bee done in the name of any inferior person than he or shee that holdeth the crowne of England. And likewise no man can giue pardon thereof but the Prince onely: although in times past there were certaine County Palatines, as Chester, Durham, and Elie, which were haulte Iusticers, and writtes went in their Name, and also some Lord Marchers of Wales, which claimed like priuiledge: all these are now worne away. The supreme iustice is done in the kings name, and by his authority onely.

The Prince hath the wardship and first mariage of all those that hold land of him in chiefe. And also the gouernment of all fooles naturall, or such as be made by aduenture of sickneſſe, and so continue, if they bee landed. This being once grounded by act of Parlement (although some inconuenience hath beene thought to grow thereof, and since that time it hath beene thought very vnreasonable) yet once annexed to the Crowne, who ought to goe about to take the club out of Hercules hand? And being gouerned iustly and rightly, I see not so much inconuenience in it, as some men would make of it: diuers other rights and preheminences the Prince hath, which be called prerogatiues, royals, or the prerogatiue of the king, which be declared particularly in the bookes of the common lawes of England.

To bee short, the Prince is the life, the head, and the authoritie of all things that bee done in the Realme of England. And to no prince is done more honour and reuerence, then to the king and Queene of England: no

man speaketh to the Prince, nor serueth at the table, but in adoration and kneeling, all persons of the Realme bee bare headed before him: insomuch that in the chamber of presence where the cloath of estate is set, no man dare walk, yea though the Prince bee not there, no man dare tarry there but bare-headed. This is vnderstood of the subiects of the Realme, for all strangers bee suffered there and in all places to vse the manner of their country, such is the ciuilitie of our Nation.

Chap. V.

The Chiefe points wherein one Common wealth doth differ from another.

NOw that we haue spoken of the Parlement (which is the whole, vniuersall, and generall consent and authoritie aswel of the prince, as of the Nobility & commons, that is to say, of the whole head and bodie of the realme of England) and also of the Prince, (which is the head, life and gouernour of this common-wealth) there remaineth to shewe, how this head doth distribute his authority and power to the rest of the members for the gouernment of his realme, and common-wealth of the politicke bodie of England. And whereas all common-wealths and gouernements be most occupied, and bee most diuers in the fashion of fiue things: In making of lawes and ordinances, for their owne gouernement: in making of battell and peace, or truce with forraine nations, in prouiding of money for the maintenance of them selues, and defence of themselues against their enemies, in chosing and election of the chiefe officers and magistrates: and fiftly, in the administration of iustice. The first and third wee haue shewed is done by the Prince in Parlement. The second and fourth, by the prince himselfe: the fift remaineth to be declared.

Chap.

Chap. VI.

Of three manners and formes of tryals or iudgments in England.

By order and vſage of England, there be three waies and manners whereby abſolute and definite iudgment is giuen, by Parliament, which is the higheſt and moſt abſolute, by battle, and by the great aſſiſe.

Chap. VII.

Tryall or iudgment by Parliament.

The manner of giuing iudgment by Parliament betweene priuate and priuate men, or betweene the Prince and any priuate man, be it in matters criminall or ciuill, for land or for heritage, doth not differ from the order which I haue preſcribed, but it proceedeth by bill thriſe read in each houſe, and aſſented to as I haue ſaid before, and at the laſt day confirmed and allowed by the Prince. Howbeit ſuch bills be ſeldome receiued, becauſe that great counſell beeing inough occupied with the publique affaires of the Realme, will not gladly intermeddle it ſelfe with priuate quarrels and queſtions.

Chap. VIII.

The trial of iudgment by battle.

This is at this time not much vſed, partly becauſe of long time the Pope and the Clergie, to whome in time paſt we were much ſubiect, alwaies cried againſt it as a thing damnable and vnlawfull: and partly becauſe in all Common-wealthes, as to the tongue, ſo to the manners, faſhions, habits, yea and kinds of trials and iudgments, and to all other things that is therein vſed, time

and ſpace of yeares by vſage hath a change. But I could not yet learne that it was euer abrogated. So that it remaineth in force, whenſoeuer it be demaunded. The manner of it is deſcribed in Briten.

Chap. IX.

The triall by Aſſiſe or twelue men, and firſt of the three parts which be neceſſary in Iudgement.

The two firſt iudgements be abſolute, ſupreame and without appeale, and ſo is alſo the iudgement by the great Aſſiſe. And the cauſe of maner of iudgements in England is in many things different from the faſhion vſed either in France or in Italy, or in any other place. If the Emperors lawes and conſtitutions (called the ciuil lawes) be put in vſe, it will be neceſſary here to make a little digreſſion, to the intent, that that which ſhall bee ſaid hereafter, may be better vnderſtode. All Purſuites and actions (we call them in our Engliſh tongue pleas) and in barbarous (but now vſuall Latine, placita, taking that name abuſiue of the definitiue ſentence, which may well be called placitum, or ἄριστον. The French vſeth the ſame, calling in their language, the ſentence of their iudges areſte, or areſt, in which wordes notwithſtanding after their cuſtome they doe not ſound the ſ. But wee call placitum the action, not the ſentence, and placitare barbarouſly, for to pleade in Engliſh, agere, or litigare. Now in all iudgements being two parties, the firſt wee call the inpleader, ſuiter, demaunder, or demandant, and plaintife. In criminall cauſes, if hee profeſſe to be an accuſer, we call him appellant, or appelour, and ſo, accuſation we call appeale. The other we call the defendant, and in criminall cauſes, priſoner, for he cannot anſwere, in cauſes criminall before he doe render himſelfe, or be rendered priſoner,

Iudex

Iudex, is of vs called Iudge, but our fashion is to diuers, that they which giue the deadly stroke, and either condemne or acquite the man for guiltie or not guiltie, are not called Iudges, but the twelue men. And the same order aswell in ciuill matters and pecuniarie, as in matters criminall.

CHAP. X.
Of Pleas or Actions.

PLeas or actions criminall, be in English called pleas of the Crowne, which be all those which tend to take away a mans life or any member of him, for his euill deserning against the Prince and Common wealth.

And this name is giuen not without a cause. For taking this for a principle, that the life and member of an Englishman is in the power onely of the Prince and his lawes, when any of his subiects is spoyled either of life or member, the Prince is endamaged thereby, and hath good cause to aske account how his subiects should come to that mischiefe. And againe, forsomuch as the Prince who gouerneth the Scepter, and holdeth the Crowne of England, hath this in his care and charge, to see the Realme well gouerned, the life, members, and possessions of his subiects kept in peace and assurance: he that by violence shall attempt to breake that peace and assurance, hath forfaited against the Scepter and Crowne of England: and therefore not without a cause in all inquisitions and inditements, if any be found by the twelue men to haue offended in that behalfe, straight the Prince is said to be partie, and he that shall speake for the prisoner shall be rebuked, as speaking against the Prince. Neuertheless, it is neuer forbidden, but the prisoner, and partie defendant, in any cause may alleadge for him all the reasons, meanes, and defences that he can, and shall bee

Sauing in appeales, & vpon a speciall plea, Actio, is the parties whole suit: Breue is the Kings precept.

Peaceably heard and quietly. But in those pleas and Pursuites of the Crowne, Procuror or Aduocate he gets none, which in ciuill and pecuniary matters (be it for land, rent, right, or possession, although hee pleade against the Prince himselfe) he is neuer denied.

Pleas ciuill be either personall or reall: personall, as contracts or for iniuries: reall, be either possessorie, to aske, or to keepe the possession: or in rem, which wee call a writ of right. For that which in the ciuill law is called actio or formula, wee call writte in English, so the Greekes called it word for word γράφη and in our barbarous Latine we name it *breue*.

And as the olde Romans had their actions some *ex iure ciuili* and some *ex iure prætorio*, and ordinarily *prætor dabat actiones, & formulas actionum*: so in England wee retaine still this, and haue some writtes out of the Chancerie, other out of the common pleas or the Kings bench.

Chap. XI.

Of the chiefe Tribunalls, Benches, or Courtes of England.

In times past (as may appeare to him that shall with iudgement read the Hystories and antiquities of England) the Courts and Benches followed the King and his Court whereseoeuer he went, especially shortly after the conquest. Which thing being found very cumbersome, painfull, and chargeable to the people, it was agreed by Parliament, that there should be a standing place where iudgment should be giuen. And it hath long time bene vsed in Westminster hall, which King William Rufus builded for the Hall of his owne house. In that Hall be ordinarily seene three Tribunals, or Iudges seates. At the entry on the right hand the common pleas where ciuill matters are to be pleaded, specially such as

touch

touch lands or contracts. At the vpper end of the Hall on the right hand, the Kings Bench, where pleas of the Crowne haue their place. And on the leaft hand ſitteth the Chancellor accompanied with the maiſter of the Rolls, who in Latine may be called *cuſtos archivorum Regis*, and certaine men learned in the ciuill law, called Maſters of the Chancery, in Latine they may bee called *Aſſeſſores*.

Chap. XII.

Of the times of pleading called Termes: and of the Chauncelour and Chauncerie.

TWo things may be mooued in queſtion heere, how all England (being ſo long and ſo large, and hauing ſo many ſhires and prouinces therein) can be anſwered of iuſtice in one place, and in three benches, be they neuer ſo great? Another (whereas the Kings bench is exerciſed in criminall cauſes, and in all pleas of the crowne, and the common place in all ciuill cauſes, reall, and perſonall) what place then hath the Chauncery?

The firſt queſtion will ſeeme more meruailous, and haue more occaſion of doubt, when I ſhall alſo tell that the Law is not open at all times, no, not the third part of the yeere. But where all other Citties and Common wealths had all the yeare pleas, ſuites, and iudgement, except for certaine holy dayes and haruеſt, and vintage, or when for ſome vrgent cauſe the lawe was commanded to be ſtopped, which is called *Iuſtitium*: contrary in ours it is but fewe times open. That is onely foure times in the yeare, which they call Termes. After Michaelmas about tenne daies, during fiue or ſixe weekes at the leaſt. After Chriſtmas about a month enduring by the ſpace of three weekes. Then from vii daye.

dayes after Easter by the spate of three weekes and odde dayes. Likewise from the first or seuenth day after Trinitie Sunday, during two weekes and odde dayes. All the rest of the yeare there is no pleading, cutting, nor pursuing of actions. This small time, and all that but in one place, may seeme very iniurious to the people, who must bee same to suffer much wrong for lacke of Iustice, and of place and time to pleade: but vnto that hereafter I intend to answere more fully, and in the meane while that shall suffice which the wise Cato answered to one who mooued, that the pleading place in Rome might be couered ouer with cannasse, as their Theaters were, to the intent that the plaintifes and defendants that were there might pleade their matters more at ease, and not be in so much daunger of their health by the heat of the Sunne striking full and open vpon their heads, which was no small griefe and disease specially at Rome. May (saith Cato) for my part I had rather wish that all the waies to the place of pleading were cast ouer with Galthrops, that the feete of such as loue so well pleading, should feele so much paine of those prickes in going thither, as their heads doe of the Sunne in tarrying there: hee meant that they were but idle, hote heads, busie bodies, and troublesome men in the Common-wealth that did so nourish pleading: good labourers and quiet men could be content to end their matters at home by iudgement of their neighboures and kinsfolke, without spending so their money vpon Procurers and Aduocates whome wee call Atturnies, Counsellors, Sergeants, and generally men of Lawe. Those hee accounted profitable Cittizens who attend their honest labour and businesse at home, and stand not waiting and gaping vpon their Roles and Processe in the lawe: as for the other, by his iudgement, it was no matter what mischiefe they suffered. To the other question of the Chancery,

this

this I answere: That our lawe which is called of vs the common lawe, as yee would say *Ius ciuile*, is, and standeth vpon ἀκριβολίαις, that is *Ius summum*: and their maximes be taken so straightly, that they may not depart from the tenour of the wordes, euen as the olde ciuill Law was. And therefore as that lacked the helpe of a Prætor (which might *moderari illud ius summum*, giue actions where none was, mittigate the crabnesse & rigor of the lawe written, giue exceptions as *metus, doli mali, minoris ætatis, &c.* for remedies, and maintaine alwaies *æquum bonum*:) the same order and rancke holdeth our Chancery. and the Chancellour hath the very authority herein as had the Prætor in the olde ciuill Lawe before the time of the Emperors. So he that putteth vp his bill in the Chancerie, after that he hath declared the mischiefe wherein hee is, hath releefe as in the solemne *Forum*. And for as much as in this case hee is without remedie in the common lawe, therefore he requireth the Chancellour according to equitie and reason to prouide for him and to take such order as to good conscience shall appertaine. And the Court of the Chancerie is called of the common people the Court of conscience, because that the Chancellour is not strained by rigour or forme of wordes of lawe to iudge but *ex æquo* and *bono* and according to conscience as I haue said. And in this Court the vsuall and proper forme of pleading of England is not vsed, but the forme of pleading by writing, which is vsed in other Countries according to the ciuill lawe: and the triall is not by twelue men, but by the examination of witnesse as in other Courts of the ciuill lawe.

Out of this Court, as from the person of the Prince come all manner of originall Writts. The declaration of Writtes is at large set downe in the register of Writs and in the *Natura brevium*. Out of this Court come most commonly Commissions, Patents, Licences, Inquisitions, &c.

The Judges of this Court are the Lord Chancellour of England, Assistaunts, the maister of the Roles, and fyve Maisters of the Chauncerie, which are commonly Doctors of the ciuill lawe.

Officers are the fyve Clarkes of the Chancery, the Clarke of the Crowne generall, the Register, the Controler of the Seale, two examiners, the Clarke of the Hamper, the three Clarkes of the Petty bagge, the Cursiters, the Sergeant of the Mace.

The Lord Chancellor is the keper of the great Seale, and hath it carried with him whersoeuer he goeth.

The maister of the Roles is the keeper of the Recordes, Judgments, and sentences giuen in the Court of Chancery.

The fyve Maisters are assistants to the Court, to shew what is the equitie of the ciuill Lawe, and what is Conscience.

The Clark of the Crowne is the chiefe Guardian of all the matters of the crowne: what are Crowne matters and pleas of the Crowne, see in the learned booke of Stanford, called the Pleas of the Crowne.

The fyve Clarkes are the atturnies, as well for the Plaintiffe, as Defendant in euery suite in the Court.

The Register is the engrosser and keeper of the decrees, publications, orders, and iniunctions issuing out of this Court.

The two examiners are such as take the examination of the witnesses brought to proue or reproue any thing in sute in this Court, and to put their depositions and answers made to their interogatories in writing.

The Controler of the Seale is to see and allow of all the Writts made in this Court.

The Clarke of the Hamper is hee that doth receiue the fines due for euery Writ sealed in this Court.

The three Clarkes of the Pettie bagge, are they that receiue

receiue the Offices that are founde in the Court of Wards.

The Cursiters are Clarkes appointed to their seueral shires which doe write originall Writts that belong to this Court of the Common place.

The Sergeant carrieth the Mace before the Lorde Chauncelor, and is to cal any man before him at his commaundement.

The Processe in the Chauncerie is a *Subpœna*, which is but to call the party before him vpon a paine, as vpon paine of xl li. &c. And this is the way vsed to bring in the party, or else by the Sergeant as before.

The punishment is, if the party will not come in, or comming in, will not obey the order of the Court, imprisonment during the pleasure of the Lord Chauncelour.

The order of proceeding is by Iniunctions, decrees, and orders which are to binde the party, and if he resist, his punishment is imprisonment.

The matter in this Court are all causes wherein equitie and extremity of law doe striue, and where the rigour of lawes haue no remedy, but conscience and the moderation of *Summum ius* hath sufficient.

And heere is to be noted, that conscience is so regarded in this Court, that the lawes are not neglected, but they must both ioyne and meete in a third, that is, in a moderation of extremity.

This Court is called of some *Officina Iuris Ciuilis Anglorum*, because out of this Court issue all manner of Processe which giue the party his cause of action in other Courts.

Chap. XIII.

Of Iudges in the common Lawe of England, and the manner of tryall and pleading there.

THe Prince out of the numbers of those who haue beene Counsellors or Sergeants at the Law, which bee those who in Latine are called *causidici* or *aduocati*; chooseth two of the most approued for learning, age, discretion, and exercise, of whome the one is called chiefe Iustice of the Kings bench, or simply chiefe Iustice, the other of the common place, and others to the number of fiue or more, which haue each an ordinary fee or stipendof the Prince.

These doe sit at such dayes as be ferme, which may be called *Dies legitimi iuridici*, or *fasti*, in their distinct places as I haue said before. There they heare the pleading of all matters which doe come before them: and in ciuill matters where the pleading is for money, or land, or possession, part by writing, and part by declaration and altercation of the aduocates the one with the other, it doth so procéede before them till it doe come to the issue, which the Latines doe call *statum causæ*, I doe not meane *contestationem litis*, but as the Rhetoritians doe call *statum*, we doe most properly call it the issue, for there is the place where the debate and strife remaineth (as a water held in a close and dark vessel stinketh out, & is voyded and emptied) and no where else: that stroke well striken is the departing of all the quarels. Issues or *status* in our lawe bee ordinarily two, *facti* and *iuris*.

Chap. XIIII.

Of the Kings bench.

THe Kings bench is the Kings Court, so called because vsually the Kings haue sitten there, and also because

because that therein all causes are handled which appertain to the Crown: & such causes as wherein the King or Queene is a party, if they properly appertaine not to some other Court.

The Judges of the Kings Bench are the Lord chiefe Justice of England with other his companions assistant in giuing Judgement.

The Sergeants and Counsailours doe debate the cause.

The sentence is giuen by the chiefe Justice, the others all or the most part assenting, as it shall appeare to be in other Courts likewise. If they cannot agree, then is the matter referred to a demurre in the Exchequer chamber, before all the Justices of both the Benches, viz. the Kings Bench, and the Common pleas, and the Lord chiefe Baron of the Exchequer.

The officers in the Kings Bench, are the chiefe Protonotharie, the Secondary, the Clarke of the Crowne, the Clarke of the Exigents, the Clarke of the Papers, the Custos Brevium, and Custos Sigilli.

The Protonotharie is hee, that recordeth all iudgements, orders, and rules in this Court, and all verdicts giuen, being not of Crowne matters.

The Secondarie is the Protonotharies deputy, for the said causes, and he is the keeper and maker vp of these Records in bookes.

The Clarke of the Crowne, is to frame all inditements of felony, treason, murther, &c. all manner of appeales, and after to record them, and enter the verdict, and to make and keepe the Records touching these matters.

The Clarke of the Exigents is to frame all manner of Processes of *Exigi facias*, which doe issue out of that Court to out-law any man, and to record the outlawrie.

The Clarke of the Papers is hee that keepeth all Roles, Scripts, and pleadings, and other things in writing which are not of record.

The Custos brevium is he which fileth all the writs iudiciall and originall, after the Sherife hath returned them, hee is chargeable if any bee embeseled or privily conveyed away from the file.

The Custos Sigilli is hee that doth keepe the Seale, and seeketh all iudiciall Writs, and all Patents, licenses issuing out of this Court, and taketh the fee due for them, and thereof to make his account.

There are certaine Atturnies belonging to this court in number as the Prætonotharie shall appoint: those are for Plaintiffes and defendants in every cause, and they frame and make the pleadings.

The manner of proceeding in this Court is by Latitat, Arrest and Bill.

The Latitat is to bring the party in, when hee is not to be found or will not appeare and answere.

Arrest is when the party is arrested, and then is driuen to finde baile, viz. two sufficient sureties or more as the case shall neede.

By Bill the suite is when the party is in *Custodia Mareschalli*, and is from thence brought to answer.

The Matters in this Court are properly all matters of the Crowne, whereof see Stanfords booke aforesaide.

In these they proceede by inditements, verdict, appeale, Improperly all suites wherein the King is a party, or have any losse. Such are Conspiracies, Champarties, Imbracer, Maintenance, Decies tantum maymes, Slanders, actions for le cas: of these see Natura brevium.

Chap.

Chap. XV.
Of the Court of common pleas.

THe Court of common pleas is the Kings Court, wherein are holden all common pleas between subiect and subiect, of all matters of Common law: so called, for that it serueth for the exact and precise administration of the common law.

The Iudges in this Court are, Lord chiefe Iustice of the common pleas, three other his associates. The Sergeants at the law whose number is some time more, sometimes lesse, at the pleasure of the Prince. These all are sworne to serue the turne of the Common Lawe at this barre.

Two of them are alwaies appointed to serue the Princes turne in what Court soeuer, and are called the Queenes Sergeants.

The officers of this Court are the Custos Breuium, three Protonotaries, the Clarke of the warrants, the Clarke of the Essoynes, diuers Atturneis, Filliters for euery shire, Exigenters for euery shire, the Clarke of the Iuries, the Cirographer for fines, the Clarke of the Quenes siluer for errours in this court committed, the Clarke of the seale, as before for the Kings bench.

The Custos Breuium is the chiefe Clarke in the Court, and he hath the custody of all the writs whatsoeuer returnable into this Court, come they either at the day of the returne, or after the day which is called Post diem.

The Protonotaries are they which after the parties haue appeared in Court, doe enter the matters in suite, and make the pleadings, and enter them.

The Filliters are they which make vp all meane processe vpon the originall writtes, and the same writtes returned

turned by the Sheriffe, are by the atturneis deliuered to the Custos Brevium to file or string, there to remain of record.

The Exigenters are such as make out the exigentes and writs of proclamation in euery countie, where the parties are, that vpon the same proces or summons will not appeare.

The Clarke of the warrants is hee which dooth take the warrants of an atturney, which shall prosecute for the plantife or defendant: and is hee that enrolleth all deedes acknowledged before the Justices of the same Court.

The Clarke of the Essoynes, is he which doth essoyne the defendants in euery action, before the day of his appearance.

An Essoyne is an ordinary delay by office of Court in action: and the officer before whom the Clarke is to take the essoyne, is the puny Justice in the common pleas, who for that purpose, sitteth three daies before the Tearme.

The common atturneis are such as are allowed in this Court, by the Lorde chiefe Justice of the common pleas, and his assistance to prosecute or defende according to the instructions of their clients, for the plantife or defendant.

The Clarke of the Jurics is hee that doth make the Venire Facias, to the sherife to warne the Juries by.

The Cirographer is hee that hath the writte of couenant with the concord brought vnto him, and he maketh Indentures tripartite, whereof two are deliuered to the party for whose vse the fine is acknowledged. And the third part is reserued with him. And all the proclamations of the same fine according to the statutes made, are endorced on the third part remaining, and it is commonly called the foote of the fine.

The

The Clarke of the Queenes siluer is a distinct office of the fines, and is hee who setteth downe the mony that her Maiestie is to haue for the fine, according to the yeerly value of the land confessed, knowne, deposed or agreed vpon.

All errors in this Court committed, are reformed in the Kings bench, before the Lord cheife Iustice, and other Iustices their assistant by writ of error.

There is also the Clarke of the out-lawries, who is the Kings Atturney generall, and he entreth the out-lawrie for the Queene, after the exigent deliuered: and he maketh all the writs of out-lawrie, and none are to be made but by him.

The matters of the common pleas, are all suits of common law commenced by any writ originall, reall, or personall.

Reall are such as touch the inheritaunce, or fee of any men.

Personall are such as touch transitorie thinges, as goods, chattels, personall wronges, &c.

The difference between a writ originall, and a writ iudiciall, is this: the originall saith in the end of it (in the person of the King or Queene) Teste meipso, or meipsa, apud westmonasterium. The iudiciall writ saith in the end, Teste Christophoro wray, or Teste Iacobo Dier, or such other as shall be Lord cheife Iustice of either of those benches.

The order of processes how they follow the one after the other. In this Court is first a Summoneas in some action: then an Attachias, but in most a Capias, then a Capias pluries, then Exigi facias, and a proclamation into the Countie where the defendant dwelleth.

The Summoneas is the originall, and goeth out of the chaunceric, and is directed to the sherife, to bring the partie by a day.

The sherifes order in seruing this writ, is to goe himselfe, or his Bailife, to the land, and there to garnish the partie, by sticking vp a sticke on his lande, which done, the sherife returneth two common pledges, Iohannes Do, and Richardus Ro. and two Summonees, Richardus Denne, Henricus Fenne. After the summonees, if the partie come not in, issueth out an Attacheas, in nature of a precept, to authorize the sherife to goe to his land or house, and there to take a pledge for his appearance.

But if the partie plaintife meane to outlawe the defendant he getteth a Summoneas out of the chauncery to the sherife to warne the partie, who returneth nihil habet, &c. Then the plaintife getteth a Capias to take his body, & then an Alias capias, then a pluries capias, to all which the Sherife returneth in order as they be giuen out, Non est inuentus. After which if the party appeare not, goeth out to the Sherife the Exigi facias, and a proclamation to proclaime the partie in fiue seuerall County daies: after which proclamations, if he do not appeare, he is returned Quinto exactus, & non comparuit & ideo vtlagatus, vnlesse he do first purchase a Supersedeas, to the court to surcease. The Supersedeas is granted at the suite of the plaintife, to stay the outlawrie, and is an apparance to the sute, for the defendant suggesting to the court, that his exigent improuide immanauit shewing that the defendant was alwaies readie to appeare by his atturney. This done the plaintife declareth the defendant answereth, if the aunswere be issuable they proceede to triall. The manner of proceeding is eyther to ioyne issue, and so to passe to verdict, or els to demurre. The triall is by verdict, when the question is made de facto, as where the matter was done, when by whom, &c.

Chap.

Chap. XVI.

Of the two manner of issues.

If the question be of the law, that is, if both the parties doe agree vpon the fact, and each doe claime that by law hee ought to haue it, and will still in that sort maintaine their right, then it was called a demurrer in law: where if in the law the case seeme to the Iudges that sit doubtfull, it is called a checker chamber case, and all the Iudges will meete together, and what they shall pronounce to be the lawe, that is held for right, and the other partie loseth his action or land for euer. If the sergeants or counceilers doe stand vpon any poynt in the lawe which is not so doubtfull, the Iudges who bee taken for most expert, biddes him goe forward, and if he hath no other to say, but standeth vpon that poynt of the law, that bidding goe forward, is taken that hee loseth his action, and the defendant is licensed to depart without a day: and this is where the issue or question is of the law or Iuris. So is that case where the law is not doubtfull, according to the matter conteyned in the declaration, answere, replication, reioynder, or triplication, the Iudg out of hand decideth it. And it is the manner that each partie must agree to the other still in the fact which hee cannot deny. For if he once come to deny any dede as not done, not his writing, that the man by whome the aduersary claimeth, was not the aduersaries auncestor, or the euidence which his aduersary bringeth is not true, or that his gift was former, or any such like exception, which is auaileable to abate the action, or barre the partie: and the other ioyneth in the affirmatiue, and will auerre and prooue the same, this is called the issue, and immediatly all question of the law ceaseth, as agreed by both the parties, that there is no question in the law. Then is the

But sometimes it is determined by the same court only.

This should be meant of arespondes ouster, when the opinion is against him that taketh vn exception. Which is not peremptory. He may denie it by protestation.

issue facti is found by the twelue men of whom we shall speake hearafter, so the one partie or other looseth his cause and action: so that contrarie to the maner of the ciuill law, where first the fact is examined by witnesses indices, torments, and such like probations, to find out the trueth therof, and that done, the aduocates doe dispute of the law, to make of it what they can: saying, ex facto ius oritur. Here the Sargeants or Councellors before the Iudges doe in pleading forward with their pleading determine and agree vpon the law, and for the most part, and in maner all actions, aswell criminall as ciuill, come to the issue and state of some fact which is denied of the one partie, and auerred of the other, which fact being tried by the twelue men, as they find: so the action is woone or lost. And if a man haue many peremptory exceptions (peremptory exceptions I call only those which can make the state and issue) because the twelue men be commonly rude and ignorant, the partie shall be compelled to choose one exception where vpon to found his issue which chosen, if he fails in that by the verdict of twelue men he looseth his action and cause, and the rest can serue him for nothing.

Hauing seene booth in France and in other places, manie deuices, edicts and ordinances, how to abridge processe, and to find how that long suetes in law might bee made shorter, I haue not perceiued nor read, as yet, so wise, so iust, and so well deuised a meane found out as this, by any man among vs in Europe.

Truth it is, that where this fashion hath not bene vsed and to them to whom it is new it will not be so easily vnderstoode, and therfore they may peraduenture bee of contrarie iudgment: but the more they doe weigh and consider it, the more reasonable they shall find it.

How the issue, question, or status iuris is decided I haue told: now I will shew how it is tried when it doth

come

come to the question, state, or issue of the deed or fact. And first I must speake more largely of the manner of proceeding in the processe, and of such persons as bee necessarie for the execution thereof.

Of the sheriffe of the heire, and of the Court of Exchequer.

The Romans had to execute the commandements of the Magistrates, Lictores, Viatores, Accensos. Th: ciuill law since that time hath other names, termes and offices. The execution of the commanndements of the Magistrates in England, is ordinarily done by the sheriffes. The sherife (which is asmuch to say as the Reeue or Baily of the shire) is properly word for word Quæstor Prouinciæ, it is he which gathereth vp, and accounteth for the profits of the shire, that come to the Exchequer.

Seats in auncient Saxon is that which we by a borrowed terme call trearnre, wherof is deriued Scaccarum, signifying a Court dealing with the Kinges treasure or reuenues, and also Escactor: that is an Officer which implyeth the Kinges profit

The Exchequer (which is Fiscus Principis, or ærarium publicum, and I can not tell in what language it is called Scaccarium, some thinke it was first called statarium, because that there was the stable place to account for the reuenews of the crowne, aswell that which came of the patrimonie, which we call the Dameasues, as that which commeth of other incident acquisitions, be they rents, customes, tenthes, quinzieſmes, tares, subsidies, whersoeuer the Prince or his courte be according to the time and occasion) was a place stable, continuall, and appointed for to reken and account. The hearers of the account (who in Latine may be called tribuni ærarii) haue auditors vnder them, which the Latines doe call Rationales, but they are the cheife for the accounts of the Prince, and may be called iuridici rationales, in English wee call them Barons of the Exchequer, where

of is one who is called the chiefe Baron, as Tribunus, or Iuridicus rationalis primus, or princeps, with others to them assistant: the Chancellour of the Exchequer, two Chamberlaines, and Atturny generall. The chiefe of all is called high Treasurer of England, as you would say in Latine, Supremus ærarii anglici quæstor, or Tribunus ærarius maximus.

He hath the charge and képing of the Kinge or Queenes treasure, and many officers are at his sole appoyntment and to him accountant, as well in the Tower, Exchequer, as elsewhere. as Auditors in the mint, Auditors and tellers in the Exchequer, Receiuers. &c.

The Chancellour is the vnder Treasurer, and is gouernour of the Court, vnder the high treasurer. Many officers also are at his appoyntment.

The chiefe Baron is the iudge in lawe causes incident to this Court, the three other Barons are assistants.

The Atturney is the Atturney generall, to defend the Kinges right, and to peruse all graunts, particulars, suites, and causes handled in this Court. There are common Atturnies besides, which serue for the suters of this Court.

The other officers are two Remembrancers, two Clarkes of the Pipe, two of the first fruites and tenthes.

The Remembrancers are those which keepe all the Recordes of the Exchequer betweene the Kinge and his subiects, and enter the rules and orders there made, the one is for the Prince, the other is for the Lorde treasurer.

The Clarkes of the Pipe are those that make leases vpon particulars, and receiue the sheriffes accounts, those receiue also the bondes and tittles of other assurances.

In the office of the first fruites, are receiued all first fruits due to his Maiestie by Bishops, Deanes, and all Ecclesiasticall Persons, answerable by order of the law.

other

Other officers are Tellers, Auditors, Collectors, rent-gatherers, tallemakers, &c.

The matters of this court are all penall punishments, as intrusions, alienations without licence, penall forfaitures vpon popular actions (as a popular action is while the one part is giuen to the informer, the rest to the Prince.) Of these see the whole body of statutes at large or in Rastalls collection.

In this Court are handled all paiments, accounts, expences of the Queenes reuenues.

The vsuall Proceſſe of this court is a *Subpœna* out of this court, or a messenger to call the party.

In this court be heard Quadruplatores, which wee call promoters, which be those that in popular and penall actions be delatores, hauing thereby part of the profit by the law assigned. In this court if any question be, it is determined after the order of the common law of England by the twelue men, as I haue saide: and all customers which were in Latine called Publicani, in Greeke *Telonai*, doe accomt in this office.

The sherife of the shire is called in our common Latine Vicecomes, as one would say, Vicarius comitis, or Procomes, doing that seruice, to attend vpon the execution of the commandements of the Tribunals or Iudges which the Earle or County should doe: which Earle or County for the most part was attending vpon the prince in the wars, or otherwise about the Prince, as the worde beareth, comes principis: whereby it may appeare, that the chiefe office of the County or Earle, was to see the Kings iuſtice to haue course, and to be well executed in the Shire or County, and the Princes reuenues well answered, and brought in ærarium principis, which is called of vs the treasury.

If any fines or amercements, which in Latine bee called Mulctæ, be leuied in any of the said Courts vppon any

any man, or any arrerages of accounts by the Latines called reliqua, of such things as is of customes, taxes subsidies, or any other such occasions, the same the sheriffe of the shiere doth gather, and is respondent therfore in the Exchequer. As for other ordinary rents of patrimoniall landes, and most commonly for the taxes, customes, and subsidies, their be particular receiuers and collectors which do answer it into the Exchequer. The Sheriffe hath vnder him an vnder Sheriffe at his charge and appointment, learned somwhat in the law, especially if hee be not learned himselfe and diuers Bailifes which be called errants, whom he maketh at his pleasure, who can know each land and person in the Sheire, and their abilitie, to go vpon enquests, either to distraine or to summon him to appeare when the sheriffe shall appoint and for this cause to the sheriffes, and to the Minister most proper of the law their writs be directed.

When any thing commeth to an issue of the deed or fact, there is a writ or writing directed to the Sheriffe of the sheire where the land is, whereupon y controuersies, or where the man dwelleth of whom the mony is demaunded, which writ is called venire facias. The after the same effect an *alias*, *pluries* or *distringas*, according to the nature of the action to the returne of the Sheriffe. And if for any disobedience of not comming & appearing there be a fine (which the Latines do call *Mulcta*) set vpon any Iuries head, the Sheirife is charged with it, and taketh the distresses which in Latin be called pignora, and answereth therefore to the Exchequer. The Sheriffe is also ready by himselfe or by his vnder Sheriffe, to serue as well the Iustices of peace in their quarter Sessions, as the Iustices called Itinerantes in their great Assizes when they come into the shiere, which is twice in the yeere to dispatch and void actions criminall and ciuill depending at the common law, and which be come now to the

the iſſue. Hee hath alſo the charge of all the priſoners committed to the priſon which wee call the goale, and when any is condemned to die, it is his charge to ſee the ſentence executed. To be ſhort he is as it were the generall miniſter, and higheſt for execution of ſuch commandements, according to the Law as the Iudges ordaine, and this is enough for the Shriefe.

CHAP. XVIII.
Of the twelue men.

OF what manner and order of men in the Common-wealth the twelue men be, I haue already declared. The Shriefe alwaies warneth foure and twenty to appeare leaſt peraduenture any might bee ſicke or haue a iuſt cauſe of abſence: and if there bee not enow to make an enqueſt, the abſents be amerſed. For although they be called twelue men, as a man would ſay *duodecem viri*, yet if they be twelue, twenty, or the whole number of foure and twentie, that is no matter, twelue they muſt bee at leaſt to make an enqueſt, or as ſome call it a queſt. And enqueſt or queſt is called this lawfull kinde of triall by twelue men. In actions ciuill, which is eyther of contracts or for land, or poſſeſſion, when ſo many of thoſe that be warned appeare at the call, as be able to make an enqueſt, which as I ſaid before be no leſſe then twelue, eyther part when they bee come taketh their chalenges againſt ſo many of them as they will, which bee, that hee may not ſpend ſo much land a yeere, hee is alied, feed, or ſeruant to his aduerſe party, he is his enemy, &c. And two of the whole number doe try, and allow or diſallow the reſt.

In ſlaſter acceptions, ther be ſo many reiected, that here is not a full enqueſt, in ſome caſes that day is loſt, in ſome the enqueſt is filled ex circumſtantibus: when the

queſt is full, they be ſworne to declare the truth of that iſſue, according to the euidence and their conſcience. Then the Sergeants of either ſide declare the iſſue, and each for his Client ſaith as much as hee can. Euidences of writings be ſhewed, witneſſes be ſworne. and heard before them, not after the faſhion of the ciuill law, but openly, that not onely the twelue but the Iudges, the parties, and as many as be preſent may hear what each witneſſe doth ſay: The aduerſe party, or his aduocates which wee call Counſailors and Sergeants, interrogateth ſometime the witneſſes, and driueth them out of countenance.

Although this may ſeeme ſtrange to our Ciuilians now, yet who readeth Cicero and Quintilian, well ſhall ſee, that there was no other order and manner of examining witneſſes, or depoſing among the Romaines in their time. When it is thought that it is enough pleaded before them and the witneſſes haue ſaid what they can, one of the Iudges with a briefe and pithy recapitulation, reciteth to the twelue in ſumme the arguments of the Sergeants of eyther ſide, that which the witneſſes haue declared, and the chiefe points of the euidence ſhewed in writing, and once againe putteth them in minde of the iſſue, and ſometime giueth it them in writing, deliuering to them the euidence which is ſhewed on eyther part, if any bee, (euidence heere is called writings of contracts, autenticall after the manner of England, that is to ſay, written, ſealed, and deliuered) and bideth them goe together.

Then there is a Bayliffe charged with them to keepe them in a chamber not farre off, without breade, drinke, light, or fire: vntill they be agreed: that is, till they all agree vpon one verdict concerning the ſame iſſue, and vpon one among them, who ſhall ſpeake for them all when they be agreed: for it goeth not by the moſt part, but each

man

man muſt agree. They returne, and in ſo few words as may be, they giue their determination: ſelue I call ſixe, ſeauen, or eight words at the moſt, (for commonly the iſſue is brought ſo narrow, that ſuch number of words may be enough to affirme or to deny it,) which done, they are diſmiſſed to goe whether they will. The party with whom they haue giuen their ſentence, giueth the enqueſt their dinner that day moſt commonly, and this is all that they haue for their labour, notwithſtanding that they come, ſome twenty, ſome thirty, or forty miles or more, to the place where they giue their verdict, all the reſt is of their owne charge. And neceſſarily all the whole twelue muſt be of that ſhiere, and foure of them of the hundred where the land lieth which is in controuerſie, or where the party dwelleth who is the defendant.

CHAP. XIX.

Of parts of Shires called Hundreds, Lathes, Rapes, Wapentakes.

A Hundred, or Lath, Rape, or Wapentake, is called of the diuiſions or parts of ſhires, in diuers Countries diuerſly named, after the manner and language of each Country. For the ſhires be deuided, ſome into ten, twelue, thirteene, ſixteene, twentie, or thirtie Hundreds, more or leſſe, either that they were at the firſt a Hundred Townes and Villages in each Hundred: and although now they be but ſixteene, twentie, thirty, fourty, fifty, threeſcore, more or leſſe, yet it is ſtill called an Hundred, or elſe there were but ſo many at the firſt as be now, or a few more or leſſe, and they did find the King to his wars an hundreth able men. Lath, and Rape I take to be names of ſeruice, for that ſo many Townes in old time, and in the firſt pouertie of the Realme did meete together in one day to carry the Lords corne into his barne, which

is called in old English a Lath. Or that they met at commaundement of the Lord to reape his corne.

Wapentake I suppose came of the Danes, or peraduenture of the Saxons. For that so many townes came by their orders then, to one place, where was taken a muster of their Armour and weapons, in which place from them that could not find sufficient pledges for their good abearing, their weapons were taken away: weapon or wapon in old English doe signifie all Armes offensiue as sword, dagger, speare, launce, bill, bowes, arowes.

Of the place where the musters were taken, or where the said seruices were doone, the hundreds, Lathes, Rapes, and Wapentakes, had and haue yet their names, which be most commonly good townes, and it is to bee thought at the first they were all such. But sometimes now in places whereof the hundred hath the name, no mention nor memory of a Towne remaineth: such mutation time bringeth with it of all things. A hundreth hath one or two high Constables, who haue some authoritie ouer all the lower and particular Constables. Those high Constables be made by the Iustices of the peace of the shire, and each hundred hath his Bailiffe who is made by the Lord, if any hath that libertie, or else by the Sheriffe of the shire for the time being.

Chap. XX.
Of the Court Baron.

IT may appeare strang that of thirtie six shires, whereof each shire is deuided into diuers hundreds, each hundred containing diuers Parishes, all pleading should bee but in one place, that is in Westminster Hall, and that but in certaine times of the yeare, making little more then one quarter of the yeare in the whole. And one would thinke that there should be much lacke of Iustice and right,

right, and much wrong taken without redresse. But it is not so: The people being accustomed to live in such an equalitie of Justice, and that in such sort, that the rich hath no more advantage therein then the poore, the Proces, and proceedings to the iudgment being so short, and iudgments also being peremptory and without appellation: yet to help for small matters, where no great summe is in question, there are other Courts. In every shire from three weekes to three weekes, the Sherife for smal things not passing fourty shillings, and in certaine hundreds and liberties the Baylife likewise from three weekes to three weekes holdeth plea. And whosoever is possessioner and owner of a Mannor, may hold from three weekes to three weekes, or at his pleasure, of his Tennaunts, and amongst his Tennaunts, a Court called a Court Baron, and there his Tennaunts being sworne make a Jury, which is not called the enquest, but the homage. These principally doe enquire of the copie-holders, and other free-holders that be dead since the last Court, and bringe in their heires, and next successors, and likewise of incrochment or intrusion of any of the Tennaunts against the Lorde, or among themselues. They make orders and lawes amongst themselues, the paine of them if they bee after broken, commeth to the Lorde. And if any small matter be in controuersie, it is put to them, and commonly they doe end it. But these Courtes doe serue rather for men that can be content to be ordered by their neighbors and which loue their quiet and profit in their husbandry more then to be busie in law. For whether partie so euer will, may procure a writ out of the higher Court, to remoue the plea to Westminster.

In Cities and other great Townes, there be diuers liberties to hold plea for a bigger summe, which doe determine as well as the common Law, and after the same manner, and yet for them that will, it may be remoued to

Westminster Hall.

King Henrie the eight ordained first a president, Comsailoures, and Judges, one for the Marches of Wales, at Ludlow, or else where: another for the North partes of England, at Yorke, where be many causes determined. These two are as be Parliaments in Fraunce. But yet if there be any matters of great consequence, the party may moone at the first, or remoone it afterwards to Westminster Hall, and to the ordinary Judges of the Realme, or to the Chancellour, as the matter is.

These two Courts doe heare matters before them, part after the common law of England, and part after the fashion of the Chauncery.

CHAP. XXI.
Of the Leete, or Law day.

LEete, or Law day is not incident to every Manor, but to those onely which by speciall graunt, or long prescription, haue such libertie. This was, as it may appeare, first a speciall trust and confidence and cõmission giuen to a few put in trust by the Prince, as is now to the Iustices of Peace, to see men sworne to the Prince, to take pledges and sureties in that manner of one for another to answere for obedience and truth, to enquire of priuie conspiracies, frayes, murders, and bloodsheds, and to this was added the ouersight of bread and ale, and other measures. Many times they that be out of the homage and Court Baron of that Manor and lordship, be nenertheleſſe attrained and answerable to come to the Leete. This Leete is ordinarily kept but twice in the yeare and that at termes and times prescribed.

The Leete and Law day is all one, and betokeneth word for word, *Legitimum* or *iuridicum diem*. Law the old Saxons called *lant* or *lag*, and so by corruption and chan-

changing of language from *Lant* to *Leete*, vnderstanding Day, they which keepe our full English terme, call it yet law day.

Chap. XXII.

Of the proceedings of causes criminall, and first of the Iustices of the Peace.

Before the manner of proceeding in causes criminall can be well vnderstoode, it will be necessary to speake of three persons, the Iustices of peace, the Coroners, and the Constables. The Iustices of peace be men elected out of the Nobilitie, higher and lower, that is the Dukes, Marquises, Barons, Knights, Esquires, and Gentlemen, and of such as be learned in the Lawes, such, and in such number as the Prince shall thinke meete, and in whome for wisedome and discretion hee putteth his trust, inhabitants within the County: saving that some of the high Nobilitie and chiefe Magistrates for honours sake are put in all, or in the most of the commissions of al the shires of England. These haue no time of their rule limites, but by commission from the Prince alterable at pleasure. Iustices of quorum.

At the first they were but foure, after eight, now they come commonly to thirtie or fourtie in euery shire, either by increase of riches, learning, or actiuitie in policie and gouernement. So many more being found, which haue either will, or power, or both, are not too many to handle the affaires of the Common wealth in this behalfe. Of these in the same commission be certaine named, which be called of the *Quorum*, in whome is especiall trust reposed, that where the commission is giuen to fourty or thirty, and so at the last it commeth to foure or three, it is necessary for the performance of many affaires to haue likewise diuers of the *Quorum*. The words of the commission be such, *Quorum vos* A B C D. E F. *vnum esse volumus*.

The

The Iuſtices of the peace bee thoſe in whome at this time for repreſſing of robbers, theeues and vagabonds, of priuy complots and conſpiracies, of ryots, and violences, and all other miſdemeanors in the common-wealth, the Prince putteth his ſpeciall truſt. Each of them hath authority vpon complaint to him made of any theft, robbery, man ſlaughter, murder, violence, complots, ryots, vnlawfull games, or any ſuch diſturbance of the peace, and quiet of the Realme, to commit the perſons whome he ſuppoſeth offenders, to the priſon, and to charge the Conſtable or Sherife to bring them thither, the Iayler to receiue them, and keepe them till hee and his fellowes doe meete. A few lines ſigned with his hand is enough for that purpoſe: theſe doe meete foure times in the yeere, that is in each quarter once, to enquire of all the miſdemeanours afore-ſaid: at which daies the Sherife, or his vnder Sherife with his Baylifes bee there to attend vpon him, who muſt prepare againſt that time foure enqueſts vſſoure and twenty yeomen a peece, of diuers hundreds in the ſhiere, and beſides one which is called the great enqueſt out of the body of the ſhiere mingled with all. Theſe fiue enqueſts are ſworne before them to enquire of al heretiques, traytors, thefts, murthers, man-ſlaughters, rapes, falſe monters, extortioners, ryots, routes, forcible entryes, vnlawfull games, and all ſuch things as be contrary to the peace and good order of the Realme, and to bring in their verdict. If they among themſelues vpon their owne knowledge doe finde any culpable, they cauſe one of the Clarks to make the bill. And if any be there to complaine vpon any man for theſe faults, he putteth in his bill, which bill is preſented firſt to the Iuſtices ſitting vpon the bench, to ſee if it bee conceiued in forme of law, which done the complainant doth deliuer it to one of theſe enqueſts, and after the complainant is ſworne, he declareth to them what he can, for the proofe

This is not alwaies & in al places obſerued but onely concerning the graund enqueſt.

proofe of it. And if they finde it true, they doe nothing but write on the backside of it, *billa vera*, as ye would say, *scriptum verum*, or *accusatio iusta*, or *reus est qui accusatur*: Then hee who is there named is called indicted. The manner of the Bill is such, *Inquiratur pro domino rege*.

If they doe not finde it true, they write on the backeside *Ignoramus*, and so deliuer it to the Iustices, of whom it is rent into pieces immediatly: he that is indicted is accounted a lawfull prisoner, and after that time looked more straightly vnto. For this inditement is no conuiction: and if hee be indicted, and be not already in prison, the sheriffe if he can find him, bringeth him into prison: if he cannot findhim, Processe is made out against him, to render himselfe prisoner, or else he shall be outlawed. So he is called three times in diuers county dayes to render himselfe to the law. The fourth is called the exigent, by which he is outlawed not rendring himselfe, as yee would say: *exactus* or *actus in exilium*. The outlawe looseth all his goods to the King for his disobedience. But if after he will render himselfe to answere to the law, and shew some reasonable cause of his absence, many times of grace his outlawry is pardoned. These meetings of the Iustices of peace foure times in the yeare, be called quarter sessions, or sessions of enquirie, because that nothing is there determined touching the malefactors, but only the custodie of them: and this kind of proceeding which is by inquisition of the twelue men within themselues, and their owne consciences, or by denunciation of him that putteth in his bill to the twelue, is called at the Kings suite, and the King is reckoned the one partie, and the prisoner the other. The Iustices of the peace doe meete also at other times by commaundement of the Prince vpon suspition of warre, to take order for the safety of the shire, sometimes to take musters of harneſſe and able men, and sometimes to take orders for the excessiue wages of seruaunts and

labourers, for excesse of apparell, for unlawfull games, for conventicles and evill order in Alehouses, and Taverns, for punishment of idle and vagabond persons, and generally as I have saide for the good government of the shire, the Prince putteth his confidence in them. And commonly every yeere, or each second yeere in the beginning of Summer or afterwards, (for in the warme time the people for the most part be more unruly) even in the calme time of Peace, the Prince with his Counsell chooseth out certaine articles out of penall Lawes already made for to represse the pride and evill rule of the popular and sendeth them downe to the Justices, willing them to looke upon those points, and after they have met together, and consulted among themselves, how to order that matter most wisely and circumspectly, whereby the people might be kept in good order and obedience after the lawe, they devide themselves by three or foure: and so each in his quarter taketh order for the execution of the said Articles.

And then within certaine space they meete againe and certifie the Prince or his privie Counsell, how they doe find the shire in rule and order touching those poynts, and all other disorders. There was never in any Common-wealth devised a more wise, a more dulce and gentle, nor a more certaine way to rule the people, whereby they are kept alwaies as it were in a bridle of good order, and sooner looked unto that they should not offend, then punished when they have offended. For seeing the chiefe amongst them, their rulers, have this speciall charge, and doe call upon it, and if occasion so doe present, one or two presently are either punished, or sent to prison for disobedience to those olde orders and lawes, they take a feare within themselves, they amend, and doe promise more amendment. So that it is as a new furbushing of the good lawes of the Realme, and a continuall repressing of disorders, which doe naturally rest among men.

But

But as the inuention of this, and the vse and execution thereof is the most benefite that can be deuised for the Common-wealth of England: so when it shal be misused, dissembled with, or be contemned, and be done *pro forma tantum*, and as they terme it in Fraunce, Par maniere d'acquit only, it will be the present ruine (though not at the first perceiued) of the Common-wealth. Of which the fault may be as well in the commanders for not making good choyce, what, and how they command, as in the commaunded, for not executing that which is commaunded.

CHAP. XXIII.

Of Hue and Crie, and recognisance taken vpon them that may giue euidence.

By the old law of England, if any theft or robbery be done, if he that is robbed, or hee that seeth or perceaueth that any man is robbed doe leuie hue and crie, that is to say do crie and call for ayde, and say that a theft or robbery is done contrary to the Princes peace and assurance: the Constable of the Village to whome hee doth come, and so make that crie, ought to raise the parish to aide him and seeke the theefe, and if the theefe be not found in that parish, to goe to the next and raise that Constable, and so still by the Constables and them of the Parish one after another. This hue and cry from parish to parish is carried till the theefe or robber bee found. That parish which doth not his duty, but letteth by their negligence the theefe to depart, doth not only pay a fine to the King but must repay to the party robbed his dammages. So that euery English man is a Sergeant to take the theefe, and who sheweth himselfe negligent therein doth not only incurre euill opinion therefore, but hardly shall escape punishment: what is done with the theefe or robber when he is taken, I shall shew you hereafter. The same

manner is followed if any man be slaine, for straight the Murtherer is pursued of every man till he be taken. So soone as any is brought to the Justices of peace by this hue & crie, by the Constable, or any other who doth pursue the malefactor, hee doth examine the malefactor, and writeth the examination, and his confession: then he doth binde the party that is robbed, or him that sueth, and the Constable, and so many as can giue euidence against the malefactor to be at the next sessions of goale deliuery, to giue their euidence for the King. Hee bindeth them in recognisance of tenne pound, twenty pound, thirty pound, forty or an hundred pound, according to his discretion, & the quality of the crime: which certified vnder his hand, is leuied vpon the recognisance, if they faile of being there.

Chap. XXIIII.
Of the Coroner.

But if any man, woman, or child, bee violently slaine, the murtherer not knowne, no man ought or dare burie the Body before the Coroner hath seene it. The Coroner is one chosen by the Prince of the meaner sort of Gentlemen, and for the most part a man seene in the lawes of the Realme, to execute that office. And if the person slaine (slaine I call heere, whosoeuer hee be, man, woman, or child, that violently commeth to his death, whether it be by knife, poyson, cord, drowning, burning, suffocation, or otherwise, be it by his owne fault or default, or by any other) if (I say) the person slaine bee buried before the Coroner doe come (which for the most part men dare not doe) hee doth cause the bodie to be taken vp againe, and to bee searched, and vpon the sight of the body so violently come to his death, hee doth empanell an enquest of twelue men or moe, of those which come next by, be they straungers or inhabitants, which,

which vpon their oathes, and by the sight or view of the body, and by such informations as they can take, must search how the person slain came to his death: by whom as the doer or cause therof. These are not enclosed into a strait place, (as I tolde before of other enquests) but are suffered to go at large, & take a day, sometime after twenty or thirty dayes, more or lesse, as the fact is more euident, or more kept close, to giue their euidence, at which day they must appeare there againe before the saide Coroner to giue their verdict. So somtime the person to haue slain himselfe, somtime the brother, the husband, the wife the sister, some of acquaintance or stranger, such as God will haue reuealed, be taken. For whosoeuer they doe find as guilty of the murther, hee is straight committed to prison, and this is against him in the nature of an inditement, which is not a full condemnation, as yee shall see heereafter.

The empanelling of this enquest, and the view of the body, and the giuing of the verdict, is commonly in the streete in an open place, and in *Corona Populi*: but I take rather that this name commeth, because that the death of euery subiect by violence is accounted to touch the Crowne of the Prince, and to bee a detriment vnto it, the Prince accounting that his strength, power, and Crowne dooth stand and consist in the force of his people, and the maintenance of them in securitie and peace.

Chap. XXV.

Of the Constables.

These men are called in the elder bookes of our lawes of the Realme *Custodes pacis*: and were at the first in greater reputation than they be now. It may appeare that there was a credite giuen vnto them, not altogether vnlike to that which is now giuen to the Iustices of peace. To this day if any affray chaunce to bee made the

Constables ought and will charge them that be at debate to keepe the Princes peace, and whosoeuer refuseth to obey the Constable therein, all the people will set straight vpon him, and by force make him to render himselfe to be ordered. Likewise if any be suspected of theft, or receiuing, or of murther, or of man slaughter, the constable may take such persons, yea enter into any mans house with sufficient power, to search for such men till hee finde them: and if he see cause, keepe the suspected person in the stocks, or custodie, till hee bring them before a iustice of the peace to be examined. But for as much as euery little village hath commonly two Constables, and many times artificers, labourers, and men of small abilitie be chosen vnto that office: who haue no great experience, nor knowledge, nor authority, the Constables at this present (although this they may doe vpon their own authoritie) yet they seeme rather to bee as it were the executors of the commaundement of the Iustices of peace. For the Iustice of peace as soone as hee vnderstandeth by complaint that any man hath stollen, robbed, slaine, or any seruant or labourer without licence, hath departed out of his Masters seruice, or any that liueth idle and suspectedly, knowing once in what parish he is, he writeth to the Constable of the parish, commanding him in the Princes name, to bring that man before him: The Constable dareth not disobey. The man is brought and examined by the Iustice, and if the Iustice doe finde cause, he committeth him to the same Constable to conuey him further to the Princes gayle, where the partie must lie, till the Iustices of Peace doe meete eyther at their quarter sessions, or at their gaile deliuerie, and that the Lawe hath either condemned or acquitted him. These Constables are called in some places Headborowes, in some places Tithingmen, and be like to them who are called Consuls in many townes and villages in France. The

One or two Constables headborows or Tithingmen.

Consta-

Constables are commonly made and sworn at the Leets of the Lordes, chosen thereto by the homage, and they keepe that office sometime two, three, or foure yeeres, more or lesse, as the parish doth agree. What head borough doth betoken, it is easily knowne, our language doth declare him as the head or chiefe of the borough or village: likewise Tithing man is the chiefe of the tithing. Constable seemeth to come of our olde English worde Kinning, which is Kinningstable, as ye would say, a man established by the King, for such things as appertaine to pleas of the Crowne, and conseruation of the Kings peace, and as I said at the first, were in some more reputation, approaching to that authority, which the Justices of peace now doe hold.

Kinningstable is Regia virgula, the kings rod or wand, signifying the kings power or authority, a representation wher of is the vse of maces & whitestaues by officers in the commonwealth.

Chap. XXVI.

Of the Sessions of goale deliuery, and the definitiue proceedings in causes criminall.

How theeues and murtherers and other malefactors against the Crowne and peace, are taken and brought into hold to answere to iustice, partly by hue and cry, partly by information, and partly by the diligence of the Justices of peace and the Constables: and how at the quarter Sessions they be indicted, or else by the Coroners ye haue heard before. Enditement (as ye may perceiue by that which is also gone before) is but a former iudgement of twelue men which be called enquirers, and no definitiue sentence, but that which in Latine is called *præsudicium*, it doth but shew what opinion the country hath of the malefactor: and therefore commonly men be indicted absent, not called to it, nor knowing of it. For though a man be indicted, yet if when he come to the arraignement, there be no man to pursue further, nor no euidence of witnesse or other triall and indices against him, he is without

out difficultie acquitted. No man that is once indicted can be deliuered without arrainement: For as twelue haue giuen a preiudice against him, so twelue againe must acquit or condemne him. But if the prisoner be not indicted, but sent to prison vpon some suspition or suspitious behauiour, and none doe pursue him to the iudgment, first being proclaimed thus, A.B. prisoner standeth here at the barre, if any man can say any thing against him, let him now speake, for the prisoner standeth at his deliuerance: If no man doe then come, hee is deliuered without any further processe or trouble, agreeing first with the gayler for his fees. And these be called acquitted by proclamation. Twise in euery yeare, the one is commonly in Lent what time there is vacation from pleading in Westminster Hall, the other is in the vacation in Summer, the Prince doth send downe into euery shire of England certaine of his Iudges of Westminster Hall, and some Sergeants at the law with commission to heare and determine iointly with the Iustices of the peace all matters criminall and all prisoners which be in the Goales. These Iudges doe goe from shire to shire till they haue done their circuit of so many shires as be appointed to them for that yeare: at the end of the Terme going before their circuit, it is written and set vp in Westminster Hall on what day and in what place they will be. That day there meeteth all the Iustices of the peace of that shire, the sherife of that shire, who for that time beareth their charges, and asketh after allowance for it in the Exchequer.

The sherife hath ready for criminall causes (as I writ before at the Sessions of inquirie) foure, fiue, or sixe enquests ready warned to appeare that day to serue the Prince, and so many more as hee is commanded to haue ready to goe in ciuill matters betwixt priuate men, which they call nisi prius, because that word is in the writ.

In the Towne-house, or in some open or common place

place, there is a tribunall or place of iudgement, made aloft vpon the highest bench, there sitteth the Iudges, which be sent downe in commission, in the middest. Next them on each side sit the Iustices of Peace, according to their degree. On a lower bench before them, the rest of the Iustices of Peace, and some other Gentlemen, or their Clarkes. Before these Iudges and Iustices there is a Table set beneath, at which sitteth the Custos Rotulorum, or keeper of writs, Chelcheto, the vnder sheriffe, and such Clarkes as doe write. At the end of that Table there is a barre made with a space for the enquests, and twelue men to come in when they are called, behind that space another barre, and there stand the prisoners which be brought thether by the Gayler, all chayned one to another. Then the Cryer cryeth, and commaundeth silence. One of the Iudges breefely telleth the cause of their comming, and giueth a good lesson vnto the people. Then the prisoners are called for by name, and bidden to answere to their names. And when the Custos Rotulorum hath brought forth their endictmẽts, the Iudges do name one or two, or three of the prisoners that are indicted, whome they will haue arraigned. There the Clarke speaketh first to one of the prisoners: A.B. come to the Barre, hold vp thy hand. The Clarke goeth on: A.B. thou by the name of A.B. of such a Towne, in such a County, art endicted, that such a day, in such a place, thou hast stolne with force and armes an horse, which was such ones, of such colour, to such a value, and carried him away seloniously, and contrary to the peace of our soueraigne Lorde the King. What saiest thou to it, art thou guiltie or not guiltie? If her will not answere, or not answere directly guilty or not guilty, after he hath beene once or twice so interrogated, he is iudged mute, that is dumb by contumacie, and his condemnation is to be pressed to death, which is one of the cruellest deathes that may bee: her is

layd vpon a table, and another vpon him, and so much waight of stones or leade laid vpon that table, while as his body be crushed, and his life by that violence taken from him. This death some strong and stout hearted man doth chuse, for being not condemned of felony, his blood is not corrupted, his lands nor goods confiscate to the Prince, which in all cases of felony are commonly lost from him and his heires, if he be forejudged, that is, condemned for a felon by the law. If he confesse the inditement to be true, then when he is arraigned, no twelue men goe vpon him, there resteth but the Judges sentence of the paine of death.

If he pleade not guiltie, as commonly all theeues, robbers and murtherers doe, though they haue confessed the fact before the Justice of the peace that examined them, though they be taken with the manner, which in Latine they call in flagranti crimine, howsoeuer it be, if he plead there not guiltie, the Clarke asketh him how he will bee tryed, and telleth him he must say, by God and the Country, for these be the wordes formall of his tryall after inditement, and where the Prince is partie: if the prisoner say so, I will be tryed by God and the Country, then the Clarke replyeth, Thou hast beene indited of such a crime &c. Thou hast pleated not guiltie, being asked how thou wilt be tryed, thou hast answered by God and by the Country. Loe these honest men that be come here, be in the place and stead of the Country: and if thou hast any thing to say to any of them, looke vpon them well and nowe speake, for thou standest vpon thy life and death. Then calleth he in the first Juror. B. C. come to the Booke, and so he giueth him an oath to giue vprightly betwixt the Prince and the prisoner, &c. If the prisoner obiecteth nothing against him, hee calleth another, and so another, till there be twelue or aboue: and for the most part the prisoner can say nothing against them, for they are

chosen

chosen but for that day, and are vnknowne to him, nor they know not him, as I said, being substantial Yeomen that dwell about the place, or at the least in the hundred, or nére where the felony is supposed to be committed, men acquainted with daily labour and trauell, and not with such idle persons as be ready to doe such mischiefes.

When the enquest is full, and the prisoner hath obiected nothing against them, as indeed seldome hee doth, for the cause above rehearsed: The Clarke sayth to the Crier, countes, (in French as ye would say reckon) and so nameth all those that be on the quest. The cryer at euery name cryeth aloud, one, then two, three, foure, and so till the number be full of twelue or more, and then saith good men and true: and then saith aloud: If any can giue euidence, or can say any thing against the prisoner, let him come now, for hee standeth vpon his deliuerance. If no man come in, then the Iudge asketh who sent him to prison, who is commonly one of the Iustices of peace: he (if he be there) deliuereth vp the examination which hee tooke of him, and vnderneath the names of those whome he hath bound to giue euidence: although the malefactor hath confessed the crime to the Iustice of the Peace, and that appeare by his hand and confirmation, the twelue men will acquit the prisoner, but they which should giue euidence pay their recognizance. Howbeit this doth seldome chaunce, except it bee in small matters, and where the Iustice of peace who sent the prisoner to the goale is away. If they which bee bound to giue euidence come in, first is reade the examination, which the Iustice of peace doth giue in, then is heard (if hee be there) the man robbed what he can say, being first sworn to say the truth and after the Constable, and as many as were at the apprehension of the malefactor: and so many as can say any thing, being sworne one after another to say truth. These be set in such a place as they may see the Iudges and the

Iuſtices, the enqueſt and the priſoner, and heare them, & be heard of them all. The Iudge after they be ſworne, aſketh firſt the party robbed, if hee knowe the priſoner, and biddeth him looke vpon him: hée ſayth yea, the priſoner ſometime ſayth nay. The party purſuiuant giueth good enſignes, *verbi gratia*, I know thee well enough, thou robbedſt mée in ſuch a place, thou beatedſt mee, thou tookeſt my horſe from mee, and my purſe, thou hadſt then ſuch a coate, & ſuch a man in thy companie: The theefe will ſay no, and ſo they ſtand a while in altercation, then he telleth all that he can ſay: after him likewiſe all thoſe who were at the apprehenſion of the priſoner, or who can giue any *indices* or tokens, which wee call in our language euidence againſt the malefactor. When the Iudge hath heard them ſay enough, he aſketh if they can ſay any more: If they ſay no, then he turneth his ſpeech to the enqueſt. Good men (ſayth he) ye of the enqueſt, ye haue heard what theſe men ſay againſt ỹ priſoner you haue alſo heard what ỹ priſoner can ſay for himſelfe, haue an eye to your oath, & to your dutie, & do that which God ſhal put in your minds to the diſcharge of your conſciences, and marke well what is ſaid. Thus ſometime with one enqueſt is paſſed to the number of two or three priſoners. For if they ſhold be charged with more, the enqueſt will ſay, my Lord, we pray you charge vs with no more it is enough for our memory. Many times they are charged but with one or two. At their departing, they haue in writing nothing giuen them but the inditement, the Clarke repeating to them the effect of it, and ſhewing more, that if they finde him guilty, they ſhall enquire what goods, lands, and tenements the ſaid perſon had at the time of the felony committed: and if they finde any, they ſhall bring it in: if none they ſhall ſay ſo. If they finde him not guilty, they ſhall enquire whether he fled for the felony or no.

And there is a Bailife to waite vpon them, and to ſee that

that no man doe speake with them, and that they haue neither bread, drinke, meate, nor fire brought to them, but there to remaine in a chamber together till they agree. If they be in doubt of any thing that is sayd, or would heare againe some of them that giue euidence, to interrogate them more at full, or if any that can giue euidence come late: it is permitted that any that is sworn to say the truth may be enterrogated of them to enforme their consciences. This is to bee vnderstood, although it will seeme strange to all nations, that doe vse the ciuill Law of the Romaine Emperours, that for life and death there is nothing put in writting but the enditement onelie. All the rest is done openly in the presence of the Iudges, the Iustices, the enquest the prisoner, and so many as will or can come so neere as to heare it, and all depositions and witnesses giuen alonde, that all men may heare from the mouth of the depositors and witnesses what is saide. As of this, so is it of all other prisoners after the same sort. By that time that the enquests for the prisoners, be dispatched it is commonly dinner time, the Iudges and Iustices goe to dinner and after dinner do returne to the same place: if the enquest be not ready for the prisoners, they goe to some other enquests of *Nisi prius*, which bee ciuill matters and priuate, to driue out the time. The enquests haue no sooner agreed vpon their charge one way or other, but they tell the Bayliffe, and pray to bee heard, and considering that they bee by themselues, all this while as prisoners; as I saide before, it is no meruaile though they make expedition. The prisoners bee sent for againe to the Barre, the enquest which hath agreed, is called for each one of the Iurie by his name, to which he answereth. Then the Clarke asketh if they be agreed, and who shall speake for them, one or more saith yea, hee that speaketh for them all is called the foreman, and commonly it is he that is first sworne: then the prisoner is bidden to hold vp his hand. The Clarke saith vnto him:

Thou art endicted by the name of A. of ſuch a place, &c. being therefore arraigned thou pleadeſt thereto not guilty, being asked how thou wouldſt be tried, thou ſaidſt by God and thy Country. Theſe honeſt men were giuen to thee by God and thy Prince for thy Country: Hearken what they ſay. Then he aſketh of the enqueſt, what ſay you? Is hee guilty or not guilty? The foreman maketh anſwere in one word, guilty, or in two not guilty: the one is deadly the other acquitteth the priſoner. So that neither Judge nor Juſtice hath to doe, or can reuerſe, alter, and change that matter: if they ſay guilty. The Clarke aſketh what lands, tenements: or goods, the priſoner had at the time of the felony committed, or at any time after. Commonly it is anſwered, that they know not, nor it ſhall not greatly need, for the Sheriſe is diligent enough to enquire of that, for the Princes and his owne aduantage, and ſo is the eſcheator alſo.

Of him whome the twelue men pronounce guilty, the Judge aſketh what he can ſay for himſelfe, if hee can read, he demaundeth his Clergy. For in many felonies, as in theft of Oxen, Sheepe, Money or other ſuch things, which be no open robberies by the high way ſide, nor aſſaulting one by night in his houſe, putting him that is there in feare, ſuch is the fauour of our Lawe, that for the firſt fault the felon ſhall be admitted to his Clergy, for which purpoſe, the Biſhop muſt ſend one with authoritie vnder his ſeale to be Judge in that matter at euery gayle deliuery. If the condemned man demaundeth to be admitted to his booke, the Judge commonly giueth him a Pſalter, and turneth to what place hee will. The priſoner readeth ſo well, as hee can (God knoweth ſometime very ſlenderly:) then he aſketh of the Biſhops Commiſſary, *legit vt clericus*? The Commiſſary muſt ſay *legit* or *non legit*, for theſe be the wordes formall, and our men of law be very preciſe in their wordes formall. If hee ſay *legit*, the Judge proceedeth

proceedeth no further to sentence of death: if hee say *non*, the iudge forthwith, or the next day proceedeth to sentence, which is done by word of mouth onely. Thou A. hast beene indicted of such a felony, and therefore arraigned, thou hast pleaded not guiltie, and put thy selfe vpon God and thy Country, they haue found thee guilty, thou hast nothing to say for thy selfe, Law is, thou shalt returne to the place from whence thou camest, from thence thou shalt goe to the place of execution, there thou shalt hange till thou be dead. Then he saith to the Sherife, Sherife doe execution: he that claimeth his Clergie, is burned foorthwith in the presence of the Iudges, in the brawne of his hand with a hot yron, marked with the letter T. for a theefe, or M. for a man-slayer, in cases where Clergie is admitted, and is deliuered to the Bishops officer to bee kept in the Bishoppes prison, from whence after a certaine time by an other enquest of Clarkes heis deliuered and let at large: but if hee bee taken and condemned the second time, and his marke espied, he goeth to hanging. He whom the enquest pronounceth not guilty, is acquitted forth-with, and discharged of prison, paying the Jaylers fees. and if hee know any priuate man who purchased his indictment, and is able to pursue it, hee may haue an action of conspiracy against him, and a large amends: but that case chaunceth seldome.

Chap. XXVII.

Certaine orders peculiar to England, touching punishments of malefactors.

For any felony, man-slaughter, robbery, murther rape and such capitall crimes as touch not treason and *laesam maiestatem*, we haue by the Law of England no other punishment but to hang till they be dead: when they bee

dead

dead, euery man may bury them that will, as commonly they be. Heading, tormenting, dismembring either arme or legge, breaking vpon the wheele, empaling, and such cruell torments, as bee vsed in other Nations by the order of the law, wee haue not: and yet as few murthers committed as any where: nor it is not in the Iudges, or the Iustices power, to aggranate or mitigate the punishment of the Law, but in the Prince onely, and his priuy Counsell, which is meruailous seldome done. Yet notable murtherers many times by the Princes commandement after they be hanged with corde till they bee dead, bee hanged with chaines while they rot in the aire.

If the wife kill her husband, she shall bee burned aliue. If the seruant kill the maister, hee shall be drawne on a hurdle to the place of execution: it is called petit treason. Impoysoners, if the person die thereof by a new law made in King Henry the eights time, shall bee boyled to the death: but this mischiefe is rare, and almost vnknown in England. Attempting to impoyson a man, or laying a waite to kill a man, though hee wound him dangerously, yet if death followe not, is it no felony by the Lawe of England, for the Prince hath loft no man, and life ought to bee giuen wee say, but for life onelie.

And againe, when a man is murdered, al be principals and shall die, euen he that doth but hold the candle to giue light to the murtherers. For mitigation and moderation of paines, is but corruption of Iudges, as wee thinke. Likewise, torment or question, which is vsed by the order of the ciuill law, and custome of other Countries, to put a malefactour to excessiue paine, to make him confesse of himselfe, or of his felowes, or complices, is not vsed in England, it is taken for seruile. For how can he serue the Common-wealth after as a free-man, who hath his

body

body so haled and tormented, if hee bee not found guilty, and what amends can be made him. And if he must die, what cruelty is it so to torment him before? Likewise, confession by torment is esteemed for nothing, for if hee confesse at the iudgement, the tryall of the twelue goeth not vpon him: if he deny the fact: that which he said before hindreth him not. The nature of English men is to neglect death, to abide no torment: And therefore hee will confesse rather to haue done any thing, yea to haue killed his owne father, than to suffer torment: for death our nation doth not so much esteeme as a meane torment. In no place shall you see malefactors goe more constantlie, more assuredly, and with lesse lamentation to their death than in England.

Againe, the people not accustomed to see such cruell torments, will pitty the person tormented, and abhorre the Prince and the Iudges, who should bring in such cruelty amongst them, and the twelue men the rather absolue him. There is an old law of England, that if any Iayler shall put any prisoner being in his custody to any torment, to the intent to make him an approuer, that is to say, an accuser, or Index of his complices, the Iayler shall die therefore as a felon, And to say the trueth, to what purpose is it to vse torment? For whether the malefactour confesse or no, and whatsoeuer he sayth, if the enquest of twelue doe finde him guilty, hee dieth therefore without delay. And the malefactor seeing there is no remedie, & that they be his Countrymen, & such as hee hath himselfe agreed vnto, if they doe finde him worthy death yéelds for the most part vnto it, and doth not repine, but doth accommodate himselfe to aske mercy of God.

The nature of our Nation is frée, stout, hault, prodigall of life and blood: but contumely, beatings, seruitude, and seruile torment, and punishment, it will not abide. So in this nature and fashion, our ancient princes, and

Legislators haue nourished them, as to make them stout hearted, couragious, and Souldiours, not villaines and slaues, and that is the scope almost of all our policy.

The twelue as soone as they haue giuen their verdict are dismissed to goe whether they will, and haue no manner commodity and profit of their labour, and verdict, but onelie doe seruice to the Prince and Commonwealth.

Chap. XXVIII.

Of treason, and the trial which is vsed for the higher Nobility and Barons.

The same order touching tryall by enquest of twelue men, is taken in treason, but the paine is more cruell First to be hanged, taken downe aliue, his bowels taken out, and burned before his face, then to bee beheaded, and quartered, and those set vp in diuers places. If any Duke Marques, or any other of the degrees of a Baron, or aboue, Lorde of the Parliament bee appeached of treason, or any other capitall crime, hee is iudged by his Peeres and equalls: that is, the peomanrie doth not goe vpon him, but an enquest of the Lords of the Parliament, and they giue their voyce, not one for all, but each seuerallie as they doe in Parlement, beginning at the yongest Lord. And for Iudge one Lord sitteth, who is Constable of England for that day. The iudgement once giuen, hee breaketh his staffe, and abdicateth his office. In the rest there is no differences from that aboue written.

THE

THE THIRD BOOKE.

CHAP. I.

Of that which in other Countries is called Appellation, or Prouocation, to amend the iudgement of sentence definitiue, which is thought vniustly giuen in causes Criminall.

IF the enquest of twelue men doe seeme to the Iudges, and the Iustices to haue gone too violently against the euidence giuen in matters criminall, either it is, that vppon slender euidence they haue pronounced him guiltie, whome the Iudges and most part of the Iustices thinkes by the euidence not fully proued guilty, or for some other cause, doe thinke the person rather worthy to liue than to die. The enquest is neuertheleſſe dismissed: but when the Iudges should pronounce the sentence of death vpon the person found guilty, hee will deferre it, which is called, to reprieue the prisoner, (that is to say, to send him againe to prison) and so declare the matter to the Prince, and obtaineth after a time for the prisoner his pardon: and as for prouocation or appeale, which is vsed so much in other Countries, it hath no place in England, after sentence giuen by the twelue, whereby the person is found guilty or not guilty: but without that reprieuing, the sentence is straight put in execution by the Sheriſe.

And if they either escape, or die another death, the Sheriffe escapeth not to pay a great fine and raunsome at the Princes mercy: if hauing pregnant euidence, neuertheless, the twelue doe acquite the malefactor, which they will doe sometime and especially if they perceaue eyther one of the Iustices or of the Iudges, or some other man to pursue too much, and too malitiously the death of the prisoner, and doe suspect some subornation of the witnesse, or of them which doe giue euidence, and sometime if they perceiue the Iudge would haue the prisoner escape, and in repeating the euidence doe giue them thereof some watch-word. But if they doe (as I haue saide) pronounce not guilty vpon the prisoner, against whome manifest witnesse is brought in, the prisoner escapeth: but the twelue not only rebuked by the Iudges, but also threatned of punishment: and many times commaunded to appeare in the Starre-chamber, or before the priuie Counsell for the matter. But this threatning chanceth oftner then the execution thereof, and the twelue answere with most gentle wordes, they did it according to their consciences, and pray the Iudges to be good vnto them, they did as they thought right and as they accorded all, and so it passeth away for the most part. Yet I haue seene in my time (but not in the raigne of the King now) that an enquest for pronouncing one guiltie of treason contrary to such euidence as was brought in, were not onely imprisoned for a space, but an huge fine set vpon their heades, which they were faine to pay: An other enquest for acquiting an other, beside paying a fine of money, put to open ignominy and shame. But those doings were euen then of many accounted very violent, tyrannicall, and contrary to the libertie and custome of the Realme of England. Wherefore it commeth very seldome in vse, yet so much at a time the enquest may be corrupted, that the Prince may haue cause with iustice to punish them: For they are

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men, and subiect to corruption and partiality, as others bee.

Chap. II.

What remedie is, if the sentence be thought vniustly giuen.

In causes ciuill there is an other order: for if after the matter be pleaded to the issue, and the twelue men thereupon impaneled, the euidence brought and pleaded before them on both parties, the twelue seeme to be partiall, and to haue giuen sentence contrary to the euidence shewed vnto them: the partie greeued may bring against them, and the partie for whome the sentence is giuen, a writ of attaint: and whereas before vpon the first quest commonly they all be Yeomen, now vpon this attaint must goe foure and twenty Gentlemen dwelling within the shire, and twelue at the least of the hundreth where the land lieth. The matter is pleaded againe before the same Iudges. The partie defendant is not onely now he who claimeth the land, but also all and euery of the Yeomen, who by their verdict did giue it him.

There must in the attaint no more euidence bee brought in, but only that which was brought in and alledged before the first enquest. And if this second enquest of foure and twentie Gentlemen doe adiudge as the first did, the plaintife shall not only lose the land, but also pay a fine to the Prince, and damages to the partie. If this second enquest doe find that the first enquest haue gone partially, and against the euidence brought in before them, the first Enquest is called attainted, and accounted as periured and infamed. The Prince had before, the waste of all landes and possessions with other punishments, which at this present by a law made by Parliament in the time of King Henry the eyght is abolished, and now by that law or act of Parlement, beside other

Punishment, each of the quest attainted payeth vnto the Prince and partie, fiue pound, if it be vnder forty poundes: and if aboue, then twentie poundes. Attaints be very seldome put in vre, partly because the Gentlemen will not meete to slaunder and deface the honest Yeomen their neighboures: so that of a long time, they had rather pay a meane fine then to appeare and make the enquest. And in the meane time they will intreate so much as in them lyeth the parties to come to some composition and agreement among themselues, as lightly they doe, except eyther the corruption of the enquest be too euident, or the one partie is too obstinate and head-strong. And if the Gentlemen doe appeare, gladlier they will confirme the first sentence, for the causes which I haue said, then goe against it. But if the corruption be too much euident, they will not sticke to attaint the first enquest: yet after the Gentlemen haue attainted the Yeomen, if before the sentence bee giuen by the Iudge (which ordinarily for a time is deferred) the parties be agréed, or one of them bee dead, the attaint ceaseth.

If at any time before the sentence be giuen or put in execution, there be found some such error in the writte, in the processe, or forme (as our lawyers be very precise and curious of their formes) that it may be reuocable, it is brought afresh to the disputation by a writte of error, and all that is done reuersed, But that is common to all other Countries, where the ciuill law is vsed, which they call *de nullitate processus*, and serueth both in England and in other places aswell in causes criminall, as ciuill. Other kinde of appellation to reuoke processes, and to make them of short, long: of long infinite: which is vsed by the ciuill lawe, we haue not in our common law of England, By supplication to the Prince, and complaint to the Chancellour vpon suppofall of losse, or lacke of euidence, or too much fauour in the Country, and power of the aduersary

uersary, there is in our Country, as well as theirs both stopping and prolonging of Iustice. For what will not busie heades and louers of trouble, neuer being satisfied inuent in any Country to haue their desire, which is to vexe their neighboures, and to liue al waies in disquiet? Men euen permitted of God like flies, and lice, and other vermine, to disquiet them who would employ themselues vpon better businesse and more necessary for the Common-wealth. These men are hated, and feared of their neighboures, loued and ayded of them which gaine by processe, and war fatte by the expence and trouble of other. But as these men ordinarily spend their owne thrift, and make others against their wills to spend theirs: so sometime beeing throughly knowne, they doe not only line by the losse like euill husbandes, but beside rebuke and shame, by the equitie of the Prince and Courtes soueraigne, they come to be extraordinarily punished, both corporally, and by their purse, which thing in my minde is as royall and Princely an act, and so beneficial to the Common-wealth as in so small a matter a King or Quéene can doe, for the repose and good education of their subiects.

Chap. III.

Of that which in England is called appeale, in other places accusation.

If any man hath killed my father, my sonne, my wife, my brother or next kinsman, I haue choice to cause him to bee indited, giuing information to the enquest of enquirie, (although he chaunce to escape the Constable or Iustices hands, and therefore not to be apprehended) and thereupon to procure him to bee outlawed, or else within a yeere and a day I may enter my appeale, that is, mine accusations against him: If I began first to pursue him by information or denunciation to enditement,

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I am now no party but the Prince, who for his duty to God and his Common-wealth and subiects, must see iustice executed against all malefactors and offenders against the Peace, which is called Gods and his, and doth in such manner as I haue said before. If I leaue that and will appeale, which is proper my accusation against him who hath done to me this iniury, the defendant hath this aduantage to put himselfe to the Iurie, which is, to that which before is said to haue that issue and tryall by God and his Countrey, whereof the fashion I haue at large declared: or to demand the triall by battle, wherein both the parties must either themselues in person, or else finde other for them, who be called in our law Champions, or Campions, some dooth interprete them, ἀθλητάς, because they bee men chosen, fat, lustie, fit for the feate, or as the French doe terme them Adroicts aux armes. which shall fight it out by μονομαχία, or as now they doe call it duellum, or the Campe, which shall haue all things equall: but according as Mars giueth the victory, so the Law is iudged, the one as *peractus reus*, the other as *calumniator* to suffer the paine of death. So that by the great assise there is no appellation but death or life to the defendant, but this is more dangerous and equall, for the one or the other must die.

So is it not in the graund assise, for the *reus* or defendant is onely in danger of death. Short it is, from day to Sunne set, the quarrell is ended, or sooner who hath the better fortune. This seemeth very military (as in manner all our policie of England) and to haue as small to do with Lawyers, as with Phisitions, quickly to dispatch, and for the rest to returne, each man to his businesse to serue the Common-wealth in his vocation. The Popes of Rome, and men of the Church, who of long time haue had dominion in our consciences, and would bring things to a more moderation, haue much detested this kinde of

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triall and iudgement, as reason is euery man misliketh that which is not like to his education, and colde reasoning by Theology and Philosophie: they (I say) much mislike many things done necessarily in hote policie.

At the least a commonwealth militarie must aduenture many things to keepe it in quiet, which cannot seeme so precisely good to them which dispute thereof in the shadowe and in their studies. Howsoeuer it bee, this kinde of tryall a long time hath not beene vsed. So that at this time we may rather seek the experiences of it out of our Histories of time passed, then of any view or sight thereof, of them which are now aliue. Neuertheless the Law remaineth still, and is not abolished, and if it shall chance the murtherer or man-slear (the one wee call him that lieth in waite, and as they terme it in French de guit appendant, killeth the man, the other who by casuall falling out and sodaine debate and choler doth the same which way soeuer it be done) if he that hath slain the man hath his Pardō of the Prince as occasion or the fauor of the Prince may so present that he may haue it, yet the party greeued hath these two remedies, I say to require iustice by grand assise, or battle vpon his appeale & priuate reuenge, which is not denied him. And if the defendant either by great assise or battle be conuinced vpon that appeale, he shall die, notwithstanding the Princes pardon. So much fauorable our Princes & the Law of our realm is to iustice and to the punishment of blood violently shed.

Chap. IIII.

Of the Court of Starre-chamber.

There is yet in England another Court, of the which that I can vnderstand there is not the like in any other Country. In the Terme time (the Terme time as I haue heretofore shewed, I call the time and

those dayes when the lawe is exercised in Westminster Hall, which as I haue said, is but at certaine times and Termes) euery weeke once at the least (which is commonly on Fridaies, and Wednesdaies, and the nert day after that the Terme doth end) the Lorde Chauncellour, and the Lordes, and other of the Priuie Counsell, so manie as will, and other Lordes and Barons which be not of the priuie Counsell, and be in the Towne, and the Iudges of England, specially the two chiefe Iudges, from nine of the clocke till it be eleuen, doe sit in a place which is called the Starre-chamber, eyther because it is full of windowes, or because at the first al the roofe thereof was decked with images of starres gilded. There is plaints heard of riots. Riot is called in our English terme or speach, where any number is assembled with force to doe any thing: and it had the beginning, because that our beeing much accustomed either in forraine warres, in Fraunce, Scotland, or Irelande, or being ouermuch exercised with ciuill warres within the Realme (which is the fault that falleth ordinarily amongst bellicous Nations) whereby men of warre, Captaines and Souldiers become plentifull: which when they haue no externe seruice wherewith to occupy their buske heades and handes accustomed to fight and quarrell, must nedes seeke quarels and contentions amongst themselues, and become so ready to oppresse right among their neighbours, as they were woont before with praise of manhood to be in resisting iniury offered by their enemies. So that our Nation vsed heereunto, and vpon that more insolent at home, and not easie to be gouerned by lawe and politicke order, men of power beginning many frayes, and the stronger by factions and parties offering too much iniurie to the weaker, were occasions of making good lawes. First of retainers, that no man should haue aboue a number in his Liuery or retinue, then of the enquirie of routes

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and riots at euery Sessions, and of the lawe whereby it is prouided that if any by force or by ryot enter vpon any possessions, the Iustices of the peace shall assemble themselues, and remoue the force, and within certaine time enquire thereof.

And further, because such things are not commonlie done by meane men, but such as be of power and force, and be not to be dealt withall of euery man, nor of meane Gentlemen: if the riot be found and certified to the Kings Counsell, or if otherwise it bee complained of, the partie is sent for, and hee must appeare in the Starre-chamber: seeing (except, the presence of the King onely,) as it were the maiestie of the whole Realme before him, being neuer so stout, hee will bee abashed: and being called to answere (as hee must come of what degree soeuer hee be) he shall bee so charged with such grauitie, with such reason, and remonstrance, and of those chiefe personages of England, one after another handling him on that sort, that what courage soeuer he hath, his heart will fall to the grounde, and so much the more, when if he make not his answere the better, as seldome he can so in open violence, hee shall be committed to the Fleete, where he shall be kept in prison in such sort as these Iudges shall appoynt him, lie there till hee be weary aswell of the restraint of his liberty, as of the great expences which hee must there sustaine, and for a time be forgotten. whiles after long suite of his friendes, hee will be glad to be ordered by reason. Sometime as his deserts bee, he payeth a great fine to the Prince, besides great costes and dammages to the partie, and yet the matter wherefore hee attempted this ryot and violence, is remitted to the Common lawe For thit is the effect of this Court, to bridle such stout Noblemen, or Gentlemen which would offer wrong by force to any meaner men, and cannot bee content to demaund or defend the right by order of lawe. This Court began

Sent for by Sub pœna

long before, but tooke augmentation and authority at that time that Cardinall *Wolsey* Archbishop of Yorke was Chancellour of England, who of some was thought to haue first deuised that Court, because that he after some intermission by negligence of time, augmented the authoritie of it, which was at that time marueilous necessarie to doe, to represse the insolencie of the Noblemen and Gentlemen of the North partes of England, who being farre from the King and the seat of iustice, made almost as it were an ordinary warre among themselues, and made their force their Lawe, banding themselues with their Tenaunts and seruants, to doe or reueng iniury one against another as they listed. This thing seemed not supportable to the noble Prince Henry the eight: and sending for them one after another to his Court, to answere before the persons before named, after they had had remonstrance shewed them of their euill demeanour, and beene well disciplined as well by wordes as by fleeting a while, and thereby their purse and courage somewhat asswaged, they beganne to range themselues in order, and to vnderstand that they had a Prince who would rule his Subiects by his lawes and obedience. Sith that time this Court hath beene in more estimation, and is continued to this day in manner as I haue said before.

The Iudges of this Court are the Lord Chancellour, the Lord Treasurer, all of the Kings Maiesties Counsell, the Barons of this Land.

The officers therein are a Clarke, three Atturnies, an Examiner.

The Clarke keepeth the recordes, rules, entries, orders, and decrees, made in this Court.

The three Atturnies are for the plaintife, and for the defendant to frame their complaints, and answers, and make their matter apt to be heard for the Lordes.

The Examiner taketh the depositions of the witnesses

nesses of both sides, to the proofe or disproofe of the cause.

The order of proceeding to iudgment is by assent of voyces, and open yeelding their mind in Court, the maior part being preferred for sentence.

The punishment most vsuall, is imprisonment, pillory, a fine, and many times both fine and imprisonment.

The processe is a subpena, an attachment, a proclamation of rebellion, and a commission of rebellion.

The subpena is in manner of a libell or precept.

The proclamation and commission of rebellion seyzeth when the party is stobborne, having made contempt, and commeth not in by the former processe.

The Messengers of this Court are the warden of the Fleete, or the Sergeants at Armes.

The matters belonging most commonly, are by statutes, as is taking away of Maides within age against parents or guardians will. See Anno. 4, & 5. Phil. & Mariæ cap. 8. All notable forgeries, counterfetting letters, or priuie tokens. See Hen. Anno. 33. cap. 1. An. 5. Eliz cap. 11. slandering of Nobles, and seditious newes. See R. 2. Anno. 2. Cap. 5. Anno. 1. & 2. Phil. & Mariæ Cap. 7. Anno. 2. 3. Eliz. Cap. 7. All notable Ryots and vnlawfull assemblies. See Anno. 1. Eliz. cap. 17. And all the titles of Ryots in Raftalls abridgment, all notable deceites, and all kind of cousonage, &c.

Chap. V.
Of the Courts of Wardes and Liueries.

He whom we call a Ward in England, is called in Latine *pupillus*, and in Greeke ὀρφανὸς. The Gardian is called in Latine *tutor*, in Greeke ἐπίτροπος. A Ward or Infant is taken for a child in base age, whose Father is dead. The Romanes made two distinctions *pupillum & minorem*, the one fourteene yere olde, the other was

accounted from thence to fiue and twenty. And as *pupillus* had *tutorem*, so *minor* had *curatorem* till hee came to the age of fiue & twenty. These Tutors or Curators were accountable for the reuenues of the Pupils, minors lands, and great prouision, and many lawes and orders be made for them in the bookes of the Ciuill Lawe, for rendring iust and true accounts. So that to be a gardian or tutor was accounted among them to bee a charge or trouble, a thing subiect to much encumbrance and small profit, so that diuers meanes were sought for, to excuse men from it. With vs this is cleane contrary, for it is reckoned a profit to haue a Ward. For the Lord of whom the Ward doth hold the land, so soone as by the death of the Father the child falleth Ward vnto him, hee seaseth vpon the bodie of the Ward, and his lands, of which (so that hee doth nourish the Ward) he taketh the profites without accounts, and beside that offring to his Ward conuenable marriage without disparagement before the age of one and twenty yeares if it bee a man, of fourteene if it bee a woman. If the Ward refuse to take that marriage hee or shee must pay the value of the marriage, which is commonly rated according to the profit of his lands. All this while I speake of that which is called in French garde noble, that is, of such as holde lands of other by Knights seruice, for that is another kinde of seruice. which we call in French gard retu-rier, we call it gard in socage. that is of such as doe not hold by knights seruice, but by tenure of the plough. This Wardship falleth to him who is next of the kinne, and cannot inherit the Land of the Ward, as the Vncle by the mothers side, if the Land doe discend by the Father, and of the Fathers side, if the land discend by the mother. This Gardian is accountable for the reuenues, and profites of the Land, as the tutor by the Ciuill Lawe to the worde or pupil so soone as he is of full age.

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The man is not out of Wardship by our Lawe till one and twenty yeere olde, from thence hee is reckoned of full age, as well as in the Romaine Lawes at fiue and twenty. The woman at fourteene is out of ward, for she may haue a husband able to doe the Knights seruice, say our Bookes. And because our wiues bee in the power (as I shall tell you heereafter) of their husbands, it is no reason she should be in two diuers gards.

Many men doe esteeme this wardship by Knights seruice very vnreasonable and vniust, and contrary to nature, that a freeman and Gentleman should bee bought and sold like an Horse or an Oxe, and so change Gardians as Hatters and Lords: at whose gouernement not onely his body but his lands and his houses should bee, to be wasted and spent without accounts, and then to marry at the will of him, who is his naturall Lorde, or his will who hath brought him to such as he likes not peraduenture or else to pay so great a raunsome. This is the occasion they say, why many Gentlemen bee so euil brought vp touching vertue and learning, and but one lie in daintinesse and in pleasure: and why they bee married very young, and before they be wise, and many times do not greatly loue their wiues. For when the Father is dead, who hath the natural care of his childe: not the Mother, nor the Vncle, nor the next of kinne, who by all reason would haue most naturall care for the bringing vp of the Infant and *minor*, but the Lorde of whome hee holdeth his Lande in Knights seruice, bee it the King or Queene, Duke, Marquesse, or any other, hath the gouernment of his body, and marriage, or else who that bought him at the first, second or third hand. The Prince as hauing so many, must needes giue or sell his wardes away to other, and so hee doth. Other doe but seeke which way they may make most aduantage of him, as of an Oxe, or other Beast. These all (say they) haue no

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naturall care of the Infant, but of their owne gaine and especially the buier will not suffer his warde to take any great paines, either in study or any other hardnesse, least hee should bee sicke and die, before hee hath married his daughter, sister, or cousin, for whose sake he bought him and then all his money which he paide for him should bee lost. So hee who had a Father which kept a good house and had all things in order to maintaine it, shall come to his owne, after hee is out of wardshippe, woods decayed, houses fallen downe, stocke wasted and gone, Lands lent forth, and plowed to the barren, and to make amends, shall pay yet one yeeres rent, for release, and sue ouster le maine, beside other charges, so that not of many yeeres, and peraduenture neuer he shall bee able to recouer, and come to the estate where his Father left it. This as it is thought was first granted vpon a great extreamity to K. Henry the third for a time vpon the warre which hee had with the Walons, and afterward increased, and multiplied to more and more persons and grecuances, and will be the decay of thenability and liberty of England. Other againe say, the Ward hath no wrong, for yther his Father purchased the Lande, or it did not discend vnto him from his ancestors with his charge. And because hee holdeth by Knights seruice, which is in armes and defence, seeing that by age hee cannot doe that wherto he is bound by his Land, it is reason hee answere that profite to the Lorde whereby hee may haue as able a man to doe the seruice. The first knight in Rome, those that were chosen *equites Romani* had *equum publicum* on which they serued, and that was at the charge of Widowes and wards as appeareth by Titus Liuius, because that those persons could not doe bodily seruice to the Common-wealth. Wherefore this is no new thing, but thought reasonable in that most wise common-wealth, and to the prudent King Seruius Tullius, And for the education of our com-

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mon-wealth, it was at the first militarie, and almost in all things the scope and deseigne thereof is militarie. Yet was it thought most like, that Noble men, good Knights and great Captaines, would bring vp their Wardes in their owne feates and vertues, and then marry them into like race and stock, where they may find and make frinds. who can better looke to the education, or hath better skill of the bringing vp of a Gentleman, than hee who for his higher Nobilitie hath such a one to holde of him by Knights seruice, or would doe it better then he that looketh or may claime such seruice of his Ward, when age and yeares will make him able to doe. That which is saide that this manner of Wardship began in the time of King Henry the third, cannot seeme true. For in Normandy and other places of France the same order is.

And that Statute made in King Henry the thirds time touching Wardes, to him that will weigh it well, may seeme rather a qualification of that matter, and an argument that the fashion of Wardship was long before: but of this matter an other time shall bee more conuerient to dispute, This may suffice to declare the manner of it.

The Judge in this Court is the Maister of the Wards.

Officers are the Atturney of the Wardes for the King.

The Surueyor, the Auditor the Treasurer, the Clark, two common Atturneis, inferiour Officers, also Messengers, and Pursuuants.

The Atturney for the Wardes is alwayes for the Kinges right, and assistaunt with the Maister of the wards.

The Surueyor is he that hath the allowing of euerie liuerie that is sued out.

The Auditor taketh the account and causeth proces to be made.

The Treasurer receaueth the mony due to his Maiestie.

The Clarke is writer of the Records, and writer of the decrées, processes, and orders of the Court.

The matters of this Court are al benefites that may come vnto his Maiestie, by guard, by marriage, preuenér season, and releése.

The generall processe in this Court is a commission, a processe in manner of a proclamation, warning the party or parties to appeare before the maister of the wards. More special processe belonging to this Court, are a Diem clausit extremum, a Deuenerunt, a melius inquirendum, a Datum est nobis intelligi, a Quæ Plura. Of the nature of these, sée Stanfords booke of the Kings prerogatiue.

Out of this Court are the Liueries sued, and committed to the Clarks of the Petty bagge, officers in the Chauncery.

When the heire hath proued his age, and sued his Liuerie, then he must doe homage to that is the Deputy of the Prince for that purpose, and then must pay a fine or sée to the Lord priuy Seale.

CHAP. VI.
The Dutchy Court.

THe Duchie Court of Lancaster is also the Kings Court of Record. In it are holden all pleas reall and personall, which concerne any of the Dutchy Lands, now in his Maiesties hands and parcell of his Crowne: but severed in Court and iurisdiction.

The Iudge in this Court is the Chauncelour assisted by the Attourney of the Dutchie for the King, the Clarke

Clarke of the Court, diuers Surueyors, two common Atturneis, diuers Auditors, two assistants, the Sergeant of his Maiestie.

The Chauncelour is a Iudge of the Court, to see Iustice administred betweene his Maiestie and his Subiects, and betweene party and party.

The Attourney is to maintaine the Kings right. and is assistant to the Chauncelour, and sheweth him what the law is.

The Clarke keepeth the Roles and Records, and maketh the Processe.

The Surueiors are diuers: one more principall: they suruey the Kings land within the Dutchy.

The Auditors are diuers: one more principall, they are to account and make the order of the receits within the Dutchie.

The common Attourneis are for the suitors that haue cause in action within the Court.

The assistants are two Iudges at the Common law that are to aide them in difficult points of the law.

The Sergeant for the king, is a learned Counsailour, appointed to be of his Maiesties Counsell for his right.

There is also belonging to this Court a Vicechancelour, that serueth for the County Palatine of Lancaster, he maketh all originall processes within his libertie, as doth the Lord Chauncelour of England for the Chauncerie.

The Processe of the County Palatine, is a *Sub pœna*, as in the Chauncerie.

Chap. VII.
The Court of Requests.

This Court is the Court wherein all suites made to his Maiestie by way of supplication or petition are heard and ended, neither should it holde plea of any matters then such. And this is called the poore mans Court, because there hee should have right without paying any money: and it is called also the Court of conscience.

The Iudges in this Court are the Maisters of Requests, one for the common lawes, the other for the ciuill lawes.

The Officers in this Court, are the Register, the Examiner, three Atturnies, one messenger or Pursuiuant

The Examiner is hee that apposeth the witnesses by oath, and recordeth their depositions.

The Atturnies serue for the plaintife and defendaunt to frame their complaints and answeres.

The Pursuiuant is an officer in this Court, to bringe any man before the Iudges whome they shall name.

The matters in this Court at this day, are almost all suites that by colour of equitie or supplication made to the Prince, may be brought before them: properly all poore mens suites, which are made to his Maiestie by supplication.

The Processes in this Court, are a priuie seale, proclamation of rebellion.

The nature of these Processes is, as was said before in the Court of Starre-chamber.

Chap.

Chap. VIII.
Of Wiues and marriages.

THE wiues in England be as I said *in potestate maritorum*, not that the husband hath *vitæ ac necis potestatem*, as the Romans had in the olde time, of their children, for that is only in the power of the Prince, and his lawes, as I haue said before, but that whatsoeuer they haue before marriage, as soone as marriage is solemnised, is their husbands. I meane of money, plate, iewels, cattaile, and generally all moueables. For as for land and heritage followeth the succession, and is ordered by the law, as I shall say hereafter: and whatsoeuer they get after marriage, they get to their husbands. They neither can giue nor sell any thing eyther of their Husbands or their owne. Theirs no moueable thing is by the lawe of England *constanti matrimonio*, but as *peculium serui aut filij familias* and yet in moueables at the death of her husband she can claime nothing, but according as her shall will by his Testament, no more then his sonne can: all the rest is in the disposition of the executors, if he die testate. Yet in London and other great Cities they haue that lawe and custome, that when a man dieth, his goods bee deuided into three parts. One third part is imployed vpon the burfall and the bequests, which the Testator maketh in his testament. Another third part the wife hath as her right, and the third part is the due and right of his children, equally to bee deuided among them. So that a man there can make Testament but of one third of his goods: If hee die intestate, the funerals deducted, the goods be equally deuided betweene the wife and the children.

By the common lawe of England if a man die intestate, the Ordinary (which is the Bishop by common intendment) sometime the Archdeacon, Deane, or Prebendary,

dary, by priuiledg and prescription, doth commit the administration of the goods to the Widowe or the child, or next kinsman of the dead, appoynting out portions to such as naturally it belongeth vnto, and the Ordinary by common vnderstanding, hath such grauity and discretion as shall be fit for so absolute an authority for ỹ most part, following such diuision as is vsed in London, either by thirds or halues. But forefathers newly conuerted to the Christian Faith, had such confidence in their Pastors and instructors, and tooke them to be men of such conscience that they committed that matter to their discretion: and belike at the first they were such as would seeke no priuate profite to themselues thereby: that being once ordained hath still so continued. The abuse which hath followed was in part redressed by certaine acts of Parliament made in the time of King Henry the eyght, touching the probate of Testaments, committing of administration and mortuaries. But to turne to the matter which we now haue in hand, the wife is so much in the power of her husband, that not onely her goods by marriage are straight made her husbands, and shee looseth all her administration which shee had of them: but also where all Englishmen haue name and surname, as the Romans had, Marcus Tullius Caius Pompeius, Caius Iulius, whereof the name is giuen to vs at the Font, the surname is the name of the Gentility and flocke which the Sonne doth take of the Father alwaies, as the olde Romans did, our Daughters so soone as they be married loose the surname of their Father, and of the family and flocke whereof they doe come, and take the surname of their husbands, as transplanted from their family into another. So that if my wife was called before Philip Willford by her owne name and her Fathers surname, so soone as she is married to me, shee is no more called Philip Willford, but Philip Smith, and so must shee write and signe: and as shee changeth husbands, so

shee

thée changeth ſurnames, called alwaies by the ſurname of her laſt huſband. Yet if a woman once marrie a Lorde or a Knight, by which occaſion ſhee is called my Lady, with the ſurname of her huſband, if hee die, and ſhee take a huſband of a meaner eſtate, by whome ſhee ſhall not bee called Ladie (ſuch is the honour we doe giue to women) ſhee ſhall ſtill be called Ladie with the ſurname of her firſt huſband, and not of the ſecond.

I thinke amongſt the old Romans thoſe marriages which were made *per coemptionem in manum*, and *per as* and *libram* made the wife *in manu & poteſtate viri*, whereof alſo wee had in our old lawe and ceremonies of marriage, a certaine memorie as a vieiwe and *veſtigium*. For the woman at the Church doore was giuen of the Father, or ſome other man of the nert of her kinne into the hands of the huſband, and hee laid downe gold and ſiluer for her vpon the Booke, as though he did buy her, the Prieſt belike was in ſteede of Lipripens: our marriages be eſteemed perfect by the lawe of England, when they be ſolemnized in the Church or Chappell, in the preſence of the Prieſt and other witneſſes. And this only maketh both the huſband and the wife capable of all benefites which our lawe doth giue vnto them and their lawfull children. In ſo much that if I marry the Widow of one lately dead, which at the time of her huſbands death was with childe, if the childe be borne after marriage ſolemnized with mee, this childe ſhall be my heyre, and is accounted my lawfull ſonne, not his whoſe childe it is indeede: ſo preciſely wee doe take the letter where it is ſaide *pater eſt quem nuptiæ demonſtrant*. Thoſe waies and meanes which Iuſtinian doth declare to make baſtards to bee lawfull children, muliers or rather melieurs (for ſuch a Terme our lawe vſeth for them which be lawfull children) bee of no effect in England: neither the Pope, nor Emperor nor the Prince himſelfe neuer could here legitimate a baſtard

tard to enioy any benefite of our Lawe, the Parliament hath only that power.

Although the wife be (as I haue written before) *in manu et potestate mariti*, by our Law, yet they be not kept so straight as in a mew, and with a guard as they be in Italy and Spaine, but haue almost as much liberty as in Fraunce, and they haue for the most part all the charge of the house and houshold (as it may appeare by Aristotle and Plato, the wifes of the Greekes had in their time) which is indeede the naturall occupation, exercise, office, and part of a wife. The husband to meddle with the defence either by lawe or force, and with all forren matters which is the naturall part and office of the man, as I haue written before. And although our Lawe may seeme somewhat rigorous toward the wiues: yet for the most part they can handle their husbands so well and so dulcely, and specially when their husbands be sicke, that where the lawe giueth them nothing, their husbandes at their death of their good wil giue them all. And few there be that bee not made at the death of their husbands either sole or chiefe executrices of his last will and Testament, and haue for the most part the gouernment of the Children and their portions: except it be in London, where a peculiar order is taken by the Cittie much after the fashion of the ciuill Lawe.

It is auoydable after the husbands death except it be for one and twenty yeeres or three liues, according to the statute, or except they leaue a fine.

All this while I haue spoken onely of moueable goods. If the wife be an inheritrix and bring land with her to the marriage: that land descendeth to her eldest sonne, or is deuided among her daughters. Also the manner is, that the land which the wife bringeth to the mariage, or purchaseth afterwardes, the husband cannot sell nor alienate the same, no not with her consent, nor shee herselfe during the marriage, except that shee bee sole examined by the Iudge at the common lawe: and if shee haue no child by her and shee die, the land goeth to her next heires at the

common

common lawe: but if in the marriage hee haue a childe by her, which is heard once to cry whether the child liue or die, the husband shall haue the vsufruit of her Lands, (that is the profit of them during his life) and that is called the curtesie of England.

Likewise if the husband haue any Land, eyther by inheritance descended, or purchased and bought, if hee die before the wife, shee shall haue the vsufruit of one third part of his lands. That is, shee shall holde the one third part of his lands during her life as her dowry, whether hee hath child by her or no. If he hath any children, the rest descendeth straight to the eldest: if he hath none, to the next heire at the common Law: and if shee mislike the diuision, shee shall aske to be indowed of the fairest of his lands to the third part.

This which I haue written touching marriage and the right in moueables and vnmoueables which commeth thereby, is to be vnderstoode by the common Law when no priuate contract is more particularlie made. If there be any priuate pacts, couenants and contracts made before the marriage betwixt the husband and the wife, by themselues, by their parents, or other friendes, those haue force and be kept according to the firmitie and strength in which they are made: And this is enough of wiues and marriage.

CHAP. IX.
Of Chyldren.

OVr children be not *in potestate parentum*, as the children of the Romanes were: but as soone as they be *puberes*, which wee call the age of discretion, before that time nature doth tell they bee but as it were *partes parentum*, that which is theirs they may giue or sell, and purchase to themselues eyther lands and other moueables

the Father hauing nothing to do therwith. And therefore *mancipatio* is cleane superfluous, we know not what it is. Likewise *sui hæredis* complaints *de inofficioso testamento* or *preteritorum liberorum non emancipatorum*, haue no effect nor vse in our law, nor wee haue no manner to make lawfull Children but by marriage, and therefore we know not what is *adoptio*, nor *arrogatio*. The Testator disposeth in his last will his moueable goods freelie as hee thinketh meete and conuenient without controlement of wife or children. And our testaments for goods moueable be not subiect to the ceremonies of the Ciuill Law, but made with all libertie and freedome, and *sure militaris*. Of landes, as ye haue vnderstoode before, there is difference: For when the owner dieth, his land discendeth onely to his eldest sonne, all the rest both sonnes and daughters haue nothing by the common lawe, but must serue their eldest brother if they will, or make what other shift they can to liue: except that the Father in his life time doe make some conueiance and estate of part of his land to their vse, or else by deuise, which worde amongst our lawiers dooth betoken a testament written sealed and deliuered in the life time of the Testator before witnesse: for without those ceremonies a bequeast of lands is not auaileable. But by the Common Lawe, if he that dieth had no sonnes but daughters, the land is equally deuided among them, which by portion is made by agreement or by lot. Although (as I haue said) ordinarily and by the common Lawe the eldest sonne inherteth all the lands, yet in some Countries haue equall portion, and that is called gauelkind, and is in many places in Kent. In some places the yongest is sole heire: and in some places after another fashion. But these beeing but particular customes of certaine places, and out of the rule of common law, doe little appertaine to the disputation of the policy of the whole Realm, & may be infinite.

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The common-wealth is iudged by that which is most ordinarily and commonly done through the whole Realme.

Chap. X.
Of Bondage and Bondmen.

After that we haue spoken of all the sorts of freemen according to the diuersity of their estates and persons, it resteth to say some-what of bondemen, which were called *serui*, which kinde of people and the disposition of them and about them doth occupy the most part of Iustinians Digestes, and Code. The Romanes had two kinds of bondmen, the one which were called *serui*, and they were eyther which were bought for money, taken in warre left by succession, or purchased by some other kinde of lawfull acquisition, or else born of their bond-women, and called *vernæ*: all those kind of bondmen bee called in our law villains in grosse, as ye would say immediatly bond to the person and his heires Another they had (as appeareth in Iustinians time which they called *adscriptitij glebæ* or *agricensiti*. These were not bond to the person but to the manor or place, and did follow him who had the manors, and in our law are called villaines regardants, for because they be as members, or belonging to the manor or place. Neither of the one sort nor of the other haue we any number in England. And of the first I neuer knew any in the Realme in my time Of the second, so se we there bee, that it is not almost worth the speaking, but our law doth acknowledg them in both those sorts.

Manumission of all kinde of villaines or bondmen in England is vsed and done after diuers sortes, and by other, and more light and easie meanes than is prescribed in the ciuill Law: and being once manumitted, bee

is not libertus manumittentis, but simply liber: howbeit, since our Realme hath received the Christian Religion, which maketh vs all in Christ brethren, and in respect of God and Christ, conseruos, men began to haue conscience to hold in captiuity, and such extreame bondage, him whom they must acknowledge to be their brother, and as we vse to terme him a Christian, that is, who looketh in Christ, and by Christ, to haue equall portion with them in the Gospell and saluation.

Vpon this scruple, in continuance of time, and by long succession, the holy Fathers, Monkes and Friers, in their confession, and specially in their extreame and deadly sicknesses, burdened the consciences of thē whom they had vnder their hands: so that temporall men by little and little, by reason of that terror in their conscience, were gladde to manumitte all their villaines: but the said holy Fathers, with the Abbots and Priors, did not in like sort by theirs, for they had also conscience to empouerish and dispoile the Churches so much as to manumit such as were bond to their Churches, or to the mannors which the Church had gotten, & so kept theirs still. The same did the Bishops also, till at the last, and now of late, some Bishops (to make a peece of money) manumitted theirs, partly for argent, partly for slanders, that they seemed more cruell than the temporality: after the Monasteries comming into temporall mens hands, haue beene occasion that now they be almost all manumitted. The most part of bondmen when they were, yet were not vsed with vs so cruelly, nor in that sort as the bondmen at the Romaine ciuill lawe, as appeareth by their comedies nor as in Greece, as appeareth by theirs: but they were suffered to enioy coppy holdland, to gaine and get as other seruants, that now & then their Lords might fleese them, and take a peece of money of them, as in Fraunce the Lords doe taile them whome they call

their

their Subiects, at their pleasure, and cause them to pay such summes of money as they list to put vpon them. I thinke both in France and England, the change of Religion to a more gentle, humane, and more equall sort, (as the Christian Religion, is in respect of the Gentiles,) caused this olde kinde of seruile seruitude and slauery, to bee brought into that moderation, for necessity, first to villaines regardants, and after to seruitude of lands and tenures, and by little and little finding out more ciuill and gentle meanes, and more equall to haue that done which in time of heathenesse, seruitude, or bondage did, they almost extinguished the whole. For although all persons Christian be brethren by baptisme in Iesus Christ, and therefore may appeare equally free, yet some were, and still might be Christened being bond and serue, and whome as the baptisme did find, so it did leaue them, for it changeth not ciuill lawes nor compacts amongst men which be not contrary to Gods Lawes. but rather maintaineth them by obedience.

Which seeing men of good conscience hauing that scruple whereof I wrote before haue by little and little found meanes to haue and obtaine the profite of seruitude and bondage which gentility did vse, and is vsed to this day among Christians on the one part and Turkes and Gentiles on the other part, when warre is betwixt them, vpon those whome they take in battaile. Turkes and Gentiles I call them, which vsing not our Lawe, the one beleeueth in one God, the other in many Gods, of whome they make images. For the Lawe of Iewes is well enough knowne, and at this day so farre as I can learne, amongst all people Iewes be holden as it were in a common seruitude, and haue no rule nor dominion as their owne prophesies doe tell, that they should not haue, after that Christ promised to them, was of them refused: for when they would not acknowledge him, obstinately

forsaking their helpe in soule for the life to come, and honour in this world for the time present, not taking the goodtidings, newes, and Euangell brought to them by the great grace of God, and by the promise of the Prophets fruitified in vs which be Gentiles, and brought forth this humanity, gentlenesse, honour, and godly knowledge which is seene at this present. But to returne to the purpose.

This perswasion I say of Christians, not to make nor keepe his brother in Christ, servile, bond, and underling for euer vnto him, as a beast rather then a man, and the humanity which the Christian Religion doth teach, hath engendred through Realmes (not neare to Turkes and Barbarians) a doubt, a conscience, and scruple to haue servaunts and bondmen: yet necessity on both sides, of the one to haue helpe, on the other to haue service, hath kept a figure or fashion thereof. So that some would not haue bondmen, but adscripticii glebæ, and villaines regardant to the ground, to the intent their service might bee furnished, and that the Country being euill, vnholsome, and otherwise barren, should not be desolate. Others afterward found out the waies and meanes, that not the men, but the Land should be bond, and bring with it such bondage and service to him that occupieth it, as to carry the Lordes dung vnto the fieldes, to plow his grounde at certaine daies, sowe, reape, come to his Court, sweare faith vnto him, and in the end to holde the Land but by copy of the Lordes Court rolle, and at the will of the Lord.

This tenure is called also in our Lawe, villaine, bond, or servile tenure: yet to consider more deepely, all Land, euen that which is called most free Land, hath a bondage annexed vnto it, not as naturally the lower ground must suffer and receiue the water and filth which falleth from the higher grounde, nor such as Iustinian speaketh of, de seruitudinibus prædiorum rusticorum & vrbanorum,

rum, but the Land doth bring a certaine kind of seruitude to the possessor. For no man holdeth Land simply free in England, but hee or shee that holdeth the Crowne of England: all others hold their Land in fee, that is, vpon a faith or trust, and some seruice to bee done to another Lord of a manno, as his superior, and he againe of an higher Lord, till it come to the Prince, and him that holdeth the crowne.

So that if a man die, and it be found that hee hath land which he holdeth, but of whome no man can tell, this is vnderstoode to be holden of the Crowne, and in capite, which is much like to the Knights seruice, and draweth vnto it three seruices, homage, ward, and marriage: that is, he shall sweare to be his man, and to be true vnto him of whome he holdeth the land: His sonne who holdeth the land after the death of his Father, shall be married where it pleaseth the Lord.

He that holdeth his land most freely of a temporall man (for franke almes and franke marriage hath another cause and nature) holdeth by fealty onely, which is he shall sweare to bee true to the Lord, and doe such seruice as appertaineth for the land which he holdeth of the Lord.

So that all free land in England is holden in fee, or feodo, which is as much to say, as in fide, or fiducia. That is, in trust and confidence, that he shall be true to the Lord of whome he holdeth it, pay such rents, doe such seruice, and obserue such conditions as were annexed to the first donation. Thus all saying the Prince be not veri domini, but rather fiduciarii domini, and possessores.

This is a more likely interpretation then that which Littleton doth put in his booke, who saith that feodum, idem est quod hæreditas, which it doeth betoken in no language. This happeneth many times to them who bee of great witte and learning, yet not seene in many tongues, nor marke not the deduction of wordes which

time

time doth alter. Fides in Latine (the Gothes comming into Italy, and corrupting the language) was turned first into fede, and at this day in Italy they will say in fide, en fede, or a la fe. And some vncunning lawyers that would make a new barbarous latine word, to betoken land giuen in fidem, or as the Italian saith, in fide, or fe made it in feudum, or feodum. The nature of the word appeareth more euident in these which we call to feff, feoff, or feoffes, the ons be fiduciarii possessores: or fidei commissarii: the other is, dare in fiduciam, or fidei commissum, or more latinely, fidei committere.

The same Littleton was as much deceiued in Witherman, and diuers other old words. This Witherman, as he interpreteth vetitum namium, in what language I knowe not: whereas in trueth it is in plaine Dutch, and in our olde Saxon language, Wither nempt, alterum accipere, or vicissim rapere, a word that betokeneth that which in barbarous latine is called represalia, when one taking of me a distresse, which in latine is called pignus, or any other thing, and carrying it away out of the iurisdiction wherein I dwell, I take by order of him that hath iurisdiction, another of him againe or of some other of that iurisdiction, and doe bring it into the iurisdiction wherein I dwell, that by equall wrong I may come to haue equall right. The manner of represalia, and that we call Witherman, is not altogether one: but the nature of them both is as I haue described, and the proper signification of the words doe not much differ.

But to returne thither where wee did digresse: yee see that where the persons be free, and the bodies at full liberty, and maxime ingenui, yet by annexing a condition to the Land, there is meanes to bring the owners and possessors thereof into a certaine seruitude, or rather libertinity. That the Tennants beside paying the rent accustomed, shall owe to the Lord a certaine faith, duty, trust, obedience:

obedience, and (as wee terme it) certaine ſeruice, as libertus, or Cliens patrono: which becauſe it doth not conſiſt in the perſons, for the reſpect in them doth not make them bond, but in the land and occupation thereof, it is more properly expreſſed in calling the one Tenant, the other Lord of the fée, then eyther libertus or cliens can doe the ons, or patronus the other: for theſe words touch rather the perſons, and the office and duty betweene them, then the poſſeſſions: but in our caſe leauing the poſſeſſion and land, all the obligation of ſeruitude and ſeruice is gone.

Another kind of ſeruitude or bondage is vſed in England for the neceſſity thereof, which is called apprentice-hood. But this is onely by couenant, and for a time, and during the time, it is *vera ſeruitus*. For whatſoeuer the Apprentice getteth of his owne labour, or of his maiſters occupation or ſtocke, hee getteth to him whoſe Apprentice he is, hée muſt not lie forth of his maiſters doores, he muſt not occupy any ſtocke of his owne, nor marry without his maiſters lycence, and he muſt doe all ſeruile offices about the houſe, and be obedient to all his maiſters commaundements, and ſhall ſuffer ſuch correction as his maiſter ſhall thinke meete, and is at his maiſters cloathing and nouriſhing, his maiſter being bound onely to this which I haue ſaid, and to teach him his occupation, and for that he ſerueth, ſome for ſeauen or eight yeares, ſome nine or tenne yeares, as the maiſters and the friends of the young man ſhall thinke méete, or can agree: altogether (as Polidore hath noted) quaſi pro emptitio ſeruo: neuertheleſſe, that neyther was the cauſe of the name Apprentice, neither yet doth the word betoken that which Polidore ſuppoſeth, but it is a French word, and betoketh a learner or a ſcholler.

Apprendre in French is to learne, and Apprentize is as much to ſay in French (of which tongue wee borrowed this word, and many more other) as Diſcipulus

in Latine: Likewise hee to whome hee is bound, is not called his Lord, but his maister, as yée would say his teacher. And the pactions agréed vpon, be put in writing, signed, and sealed by the parties, and registred for more assurance. Without being such an Apprentice in London, and seruing out such a seruitude in the same Citty for the number of yeares agréed vpon, by order of the Citty amongst them, no man being neuer so much borne in London, & of Parents Londoners is admitted to be a Citizen or freéman of London: the like is vsed in other great cities of England. Besides Apprentices, others be hired for wages, and be called Seruaunts, or seruing men and women throughout the whole Realme, which be not in such bondage as Apprentices, but serue for the time for daily ministery, as serui and ancillæ did in the time of gentility, and be for other matters in liberty as full free men and women.

The sonnes of free men of London are also free by birth, according to the custom.

But all seruaunts, labourers, and others not married, must serue by the yéere: and if he be in couenant, hee may not depart out of his seruice without his maisters licence, and hee must giue his maister warning that hee will depart one quarter of a yeere before the terme of the yeere expireth, or else hee shall bee compelled to serue out another yeere. And if any young man vnmarried bee without seruice, hee shall bee compelled to get him a maister, whom he must serue for that yeere, or else he shall bee punished with stocks and whipping, as an idle vagabond. And if any man married or vnmarried, not hauing rent or liuing sufficient to maintaine himselfe, doe liue so idly, he is enquired of, and sometime sent to the Jayle, sometime otherwise punished as a sturdy vagabond: so much our policy doth abhor idlenes. This is one of the chiefe charges of the Justices of peace in euery shire. It is taken for vngentlenes and dishonor, and a shew of enmitie if any gentleman doe take an other gentlemans seruant

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(although his maister do put him away) without some certificate from his maister, either by worde or writing that he hath discharged him of his seruice. That which is spoken of men seruants, the same is also spoken of women So that all youth that hath not sufficient reuenues to maintaine it selfe, must needes with vs serue, and that after an order as I haue written. Thus necessity, & want of bondmen hath made men to vse free men as bondmen to all seruile seruices: but yet more liberally and freelie, and with a more equality and moderation, than in time of gentility slaues and bondmen were wont to bee vsed, as I haue saide before. This first and latter fashion of temporall seruitude, and vpon paction, is vsed in such Countries as haue left off the old accustomed manner of seruants, slaues, bondmen, and bondwomen, which was in vse before they had receiued the Christian faith. Some after one sort, and some eyther more or lesse rigorously, according as the nature of the people is enclined or hath deuised amongst themselues, for the necessity of seruice.

Chap. XI.

Of the Court which is Spirituall or Ecclesiasticall, and in the booke of Law, Court Christian, Curia Christianitatis.

The Archbishops and Bishops haue a certaine peculiar iurisdiction vnto them, especially in foure manner of causes: Testaments and legations, Tithes & mortuaries, marriage and adultery or fornication, and also of such things as appertaine to orders amongst themselues, and matters concerning Religion. For as it doth appeare our Auncestors hauing the Common-wealth before ordained and set in frame, when they did agree to receiue the true and Christian Religion, that which was established be-

before, and concerned externe policy (which their Apostles, Doctors, and Preachers did allow) they held & kept stil with that which they brought in of new. And those things in keeping whereof, they made conscience, they committed to them to bee ordered and gouerned as such things of which they had no skill, and as to men in whom for the holines of their life and good conscience, they had a great and sure confidence. So these matters bee ordered in their Courts, and after the fashion and manner of the law ciuill, or rather common, by citation, libell, *contestationem litis*, examination of witnesses priuily, by exceptions, replications a part and in writing, allegations matters by sentences, giuen in writing, by appellations, from one to another, as wel *à grauamine* as *à sententia definitiua* and so they haue other names, as Proctors, Aduocates, Assessors, Ordinaries, and Commissaries &c. farre from the manner of our order in the Common law of England, and from that fashion which I haue shewed you before. Wherfore if I say the Testament is false and forged, I must sue in the spirituall Lawe, so also if I demand a legacie: but if I sue the Executor or administrator, which is he in our Lawe, who is in the Ciuill Lawe *hæres*, or *bonorum mobilium possessor ab intestato*, for a debt which the dead ought mee, I must sue in the Temporall Court. These two Courts the Temporall, and the Spirituall, be so deuided, that whosoeuer sueth for any thing to Rome, or in any spirituall Court for that cause or action, which may be pleaded in the Temporall Court of the Realme, by an olde Law of England hee falleth into a *premunire*, that is, he forfaiteth all his goods to the prince and his body to remaine in prison during the Princes pleasure: and not that onely, but the Judge, the Scribe, the Procuror, and Assessor which receiueth and doth maintaine that vsurped pleading, doth incurre the same danger. Whether the word *præmuneri* doth betoken that the

the authority and iurisdiction of the Realme is prouided for before, and defended by that Lawe, & therefore it hath that name *premunire* or *premuniri*, or because that by that lawe such an attempt our hath had warning giuen before to him of the danger, into which hee falleth by such attempt, and then *premunire* is barbarously written for *premonere*, *premoneri* (as some men haue held opinion) I will not define: the effect is as I haue declared: and the Lawe was first made in King Richard the seconds time and is the remedy which is vsed when the spirituall iurisdiction will goe about to encroach any thing vpon the Temporall Courts. Because this Court or form which is called *curia christianitatis*, is yet taken as appeareth for an exterme and forraine Court, and differeth from the policy and manner of gouernment of the Realme, and is an other Court (as appeareth by the act and writ of *premunire*,) than *curia regis aut reginæ*: yet at this present this Court as well as others, hath her force, power, authority, rule, and iurisdiction, from the royall Maiestie, and the Crowne of England, and from no other forraine potentate or power vnder God, which beeing graunted (as in deede it is true) it may now appeare by some reason that the first statute of *premunire*, whereof I haue spoken, hath now no place in England, seeing there is no pleading *alibi quam in curia regis ac reginæ*.

I haue declared summarily as it were in a chart or map, or as Aristotle termeth it ὡς ἐν πίνακι the forme and manner of gouernment of England, and the policy thereof, and set before your eyes the principall points wherein it doth differ from the policy or gouernment at this time vsed in Fraunce, Italy, Spaine, Germanie, and all other Countries which doe follow the Ciuill Lawe of the Romaines, compiled by Iustinian into his pandects and code not in that sort, as Plato made his Common-wealth, or Xenophon his kingdome of Persia, nor as Sir Thomas

More his Vtopia, beeing fained Common-wealths, such as neuer was nor shall be, vaine imaginations, fantasies of Philosophers to occupie the time, and to exercise their wits: but so as England standeth, and is gouerned at this day the eight and twenty of March. Anno. 1565. in the seuenth yeere of the raigne and administration thereof by the most vertuous and noble Queene Elizabeth, daughter to King Henry the eight, and in the one and fiftieth yeare of mine age, when I was Ambassadour for her Maiestie in the Court of Fraunce, the scepter whereof at that time the noble Prince and great hope Charles Maximilian did hold, hauing then raigned foure yeares. So that whether I write true or not, it is easie to be seene with eyes (as a man would say) and felt with hands. Wherefore this beeing as a project or table of a Common wealth truly laid before you, not fained by putting a case: let vs compare it with Common-wealths which be at this day in esse, or doe remaine described in true Histories, especially in such points wherein the one differeth from the other, to see who hath taken righter truer, and more commodious way to gouerne the people as well in warre as in peace. This will bee no illiberall occupation for him that is a Philosopher, and hath a delight in disputing, nor vnprofitable for him who hath to doe, and hath good will to serue the Prince and Common-wealth, in giuing Counsaile for the better administration thereof.

Thomas Smith.